The Solicitors' Journal

Vol. 94 November 4, 1950 No. 44

CURRENT TOPICS

Road Safety Laws

A DEMAND for the better enforcement of road safety laws was made at a demonstration on 24th October under the joint auspices of the Cyclists' Touring Club and the Pedestrians' Association. A resolution was passed unanimously which stated that, in view of the appalling number of road accidents now claiming 20,000 victims killed or injured every month, the meeting affirmed its belief that it was urgently necessary for road safety laws to be strictly enforced in the interests of all road users, and called for the full co-operation of police and magistrates to that end. LORD TEVIOT, who presided, declared that anyone who misused the roads after being once convicted should be sent to prison with hard labour. Professor A. L. GOODHART, K.C., said that until public opinion was roused nothing would be done. He pointed out that last year, although 3,955 drivers had been found guilty of reckless or dangerous driving, only 358 had been disqualified. The feebleness of the magistrates was shown by the fact that out of 1,682 convictions for driving under the influence of drink or drugs only fifty-four prison sentences were passed without the option of a fine. Mr. KINGSLEY MARTIN, editor of the *New Statesman*, declared that he did not see why the withdrawal of licence should not be automatic in many cases, and prison the rule for dangerous driving. If the driver knew he was really going to lose his licence if he were caught going more than 30 m.p.h. in a restricted area the law would be observed. Road accidents would be substantially reduced only by a large number of things being done, but the most important was for the law to be enforced.

Gambling: Church Commission's Report

THAT "the gambling contract is itself a permissible contract, that is to say, one into which a man may enter without necessarily committing sin," though "it by no means follows . . . that all forms of gambling are permissible, or that all gamblers gamble innocently," is the main conclusion of "Gambling: An Ethical Discussion," a report of the Social and Industrial Commission of the Church Assembly, which was published on 28th October by the Church Information Board, Church House, Dean's Yard, Westminster, S.W.1. The report reaches this conclusion after considering the gambling contract and its varieties, including the simple wager, a bet with a bookmaker on a race, roulette, football pools, bridge, whist drives, crossword competitions, lotteries, sweepstakes, raffles, insurance, and operations on the Stock Exchange; and after examining the three main arguments in the case for the total condemnation of betting and gambling, it notes that "no transaction recognised by the London Stock Exchange falls within" the definition of gambling adopted in the report. The report goes on to discuss "Gambling as Entertainment: its Value and its Danger"; "The Conditions of Permissible Gambling," including questions of personal responsibility; the social evils arising in this connection to-day; gifts from gamblers; the moral position of those making their living out of

CONTENTS

gambling; and "The Causes of Inordinate Gambling," including "frustration." Commenting on certain current suggestions, the report agrees that "legislation might have beneficial effect to-day" to confine betting on horses to betting on the course; to restrict solicitation to gambling; to restrict dog-racing; to prohibit football pools if this is practicable or, if not, to reduce their size, prizes and numbers of employees; and to prohibit gambling machines.

Survey of Access to Open Country

LOCAL authorities are urged in Circular No. 96, issued by the Ministry of Town and Country Planning, to put in hand immediately the survey of "open country" to be made under the National Parks and Access to the Countryside Act, 1949, and to decide what arrangements are necessary for providing access to such country. Under the Act planning authorities may make agreements with landowners to give people right of access over certain specified areas. Failing agreement, they may make access orders. The circular recommends that where agreements or orders are in force any special restrictions which they impose on public access be kept to the minimum, particularly on bank holidays. Provision can be made in orders for excluding the public at certain times in unforeseen circumstances—for example, when a rare bird is nesting—but it is hoped that such special restrictions will not often be imposed. Public rights do not extend over land which is under cultivation, and local authorities are advised to issue suitable warnings to the public of this. They are also asked to consider making byelaws if complaints are made about public behaviour on access land. There is a special procedure for dealing with objections to orders which affect woodlands and gathering grounds, but local authorities are asked to try to reach agreement with the owners or bodies concerned before making such orders. They are also asked to consult with the local representatives of the Ministry of Agriculture before making orders or agreements which would affect agricultural land.

Houses of Architectural or Historic Interest and Demolition Orders

HOUSING and local planning authorities have been reminded in Circular No. 98, issued by the Ministry of Town and Country Planning, that the Housing Act, 1949, enables houses of special architectural or historic interest to be preserved where they would otherwise have been subject to demolition orders. It also provides for financial assistance to render such houses habitable. The Ministry have called attention to the importance of ensuring that the special character of such buildings is not injured when they are repaired or improvements are made to them. The circular also gives details of the procedure to be adopted for notifying local planning authorities of proposed works to such buildings.

Development Charge: Renewal of Temporary Permission

THE October issue of the *Law Society's Gazette* draws the attention of members to an extract from a letter by Mr. EDWIN ROBINSON, F.R.I.C.S., F.A.I. (at p. 650 of the *Journal of Planning Law* for August, 1950), published with the approval of the Central Land Board, as follows: ". . . Following advice from the Board's legal advisers, the Central Land Board have recently decided that, where planning permission is granted for the continuance of a use on the expiry of a temporary planning permission granted prior to 1st July, 1948, the continuance of that use is exempt from the charge on the first and any subsequent renewal."

BANKRUPTCY LAW AND PRACTICE—I

BANKRUPTCY is the status of a debtor who has been declared by judicial process to be insolvent. This declaration sets in motion a statutory system under which his property is taken out of his ownership and control to be administered for the benefit of his creditors and in return the debtor is relieved from liability. The existing law is contained in the Bankruptcy Act, 1914, the Bankruptcy (Amendment) Act, 1926, the Bankruptcy Rules, 1915, as amended from time to time, and in numerous judicial decisions interpreting these statutory documents.

There are three requisites for the successful institution of bankruptcy proceedings by a creditor. In the first place, there must be a debtor. This seems obvious. It is, however, far from being a truism, for a debtor does not mean any person who owes a sum of money to another, but only a person who is a "debtor" as defined in the Bankruptcy Acts. Secondly, there must be a debt capable of supporting a petition in bankruptcy. Lastly, the debtor must have committed an act of bankruptcy within the three months immediately preceding the presentation of the petition.

A debtor may present a bankruptcy petition against himself alleging inability to pay his debts. Such a petition is itself an act of bankruptcy and a receiving order will generally be made as a matter of course. But the debtor cannot confer on the court a jurisdiction it does not possess, and if there is no debt actually enforceable against him, he cannot be made bankrupt (*Re A. and M. (Debtors)* [1926] Ch. 274).

THE DEBTOR

A person is not subject to English bankruptcy law unless at the time he commits an act of bankruptcy he is a "debtor" as defined in s. 1 (2) of the Bankruptcy Act, 1914, that is, he was personally present in England, or ordinarily resided or had a place of residence in England, or was carrying on business in England personally or by means of an agent or manager, or was a member of a firm or partnership which carried on business in England. The definition expressly includes, unless the context otherwise implies, a person who is not a British subject. Further, in the case of a bankruptcy petition presented by a creditor (as opposed to the debtor's petition), it is provided by s. 4 (1) (*d*) of the 1914 Act that the debtor must be domiciled in England or within one year before the presentation of the petition have ordinarily resided in England, or had a dwelling-house or place of business in England, or carried on business in England, or been a member of a firm or partnership carrying on business in England. Section 4 (1) (*d*) is a provision by way of exclusion and not a definition; it is negative in nature and prescribes conditions in the absence of which the court cannot exercise jurisdiction. As a rule it is only likely to give rise to an issue in bankruptcy proceedings where the person sought to be made bankrupt is a foreigner.

Foreigners.—The principal Bankruptcy Acts passed in the nineteenth century, those of 1869 and 1883, prescribed the requirements for a petition for adjudication in bankruptcy of a

debtor. They defined " acts of bankruptcy " in terms which left no doubt that some acts of bankruptcy could be committed either in England or abroad, but they did not define the word " debtor." *Prima facie*, therefore, a debtor for the purpose of bankruptcy law included any person anywhere who owed a debt in England. The courts said this obviously could not be the case and that some limitation must be placed on the meaning of " debtor ". In the absence of express terms to the contrary, an English statute could only affect Englishmen or foreigners within the allegiance of the English Crown, and consequently, a debtor who was a foreigner and abroad was not subject to English bankruptcy jurisdiction unless the act of bankruptcy alleged was committed in England (*Re Crispin ; ex parte Crispin* (1873), L.R. 8 Ch. 374). This is no no longer the position. Section 1 (2) of the 1914 Act provides in express terms that " a debtor " includes both British subjects and non-British subjects and in *Re a Debtor* (1948), 64 T.L.R. 446, the Court of Appeal decided that a foreigner residing abroad was liable to English bankruptcy jurisdiction in respect of an alleged act of bankruptcy committed abroad. Consequently, a foreigner is now liable to be made bankrupt in England if—

(i) he owes a debt capable of supporting a bankruptcy petition and, in the case of a creditor's petition, the requirement in s. 4 (1) (*d*) of the 1914 Act as to domicile is satisfied ; and

(ii) he commits an act of bankruptcy while in England ; *or* he commits abroad one of the acts of bankruptcy which by the express terms of s. 1 (1) or by necessary implication may be committed by a debtor whether he is in England or elsewhere. In this connection it should be noted that a foreigner resident abroad and trading in England, who executes abroad a deed of assignment of his property for the benefit of his creditors generally, does not commit an act of bankruptcy if the deed is intended to operate according to the law of his domicile (*Cooke* v. *Charles A. Vogler Co.* [1901] A.C. 102).

Infants.—There is jurisdiction under the Bankruptcy Act, 1914, to make a receiving order against an infant, where the necessary conditions of a creditor, an enforceable debt and the other conditions required by the Act are satisfied. In such a case the infant is not protected from being made a bankrupt by the Infants Relief Act, 1874. Nor is he protected by any doctrine founded on public policy, since the court possesses a discretion—it is not bound to make a receiving order—which would protect an infant from any injustice. This was recently decided by the Court of Appeal in *Re a Debtor ; ex parte Commissioners of Customs and Excise* v. *The Debtor* (1950), 94 SOL. J. 113, where the infant carried on jointly with her mother a business in the course of which they incurred liabilities in respect of purchase tax which they failed to discharge.

Earlier reported attempts to make an infant bankrupt have usually failed, but an examination of the cases shows that the reason for failure was that on the facts of the particular case there was no debt actually enforceable against the infant, as in *Re Jones ; ex parte Jones* (1881), 18 Ch. D. 109. Since the recent decision of the Court of Appeal, it seems to be settled that an infant may be adjudicated bankrupt in respect of damages in pure tort or in respect of a debt for necessaries. As regards the latter liability, however, it would seem that a prior judgment or order of the court must have established that the transaction was in fact one under which necessaries were supplied to the infant and have fixed (in a case of the sale of goods at least) the reasonable price which is due from the infant.

In the case of a partnership where one of the partners is an infant, and an act of bankruptcy is committed by the firm, a receiving order cannot be made against the firm simply, but should be made against the firm " other than " the infant partner if the debt is not enforceable against the infant (*Lovell & Christmas* v. *Beauchamp* [1894] A.C. 607).

Married women.—Before the Married Women's Property Act, 1882, a married woman could not be made bankrupt. After that Act a married woman carrying on a *trade* separately from her husband was in respect of her separate property subject to the bankruptcy laws as if she were a *feme sole*. But there was still one act of bankruptcy which a married woman could not commit, namely, non-compliance with a bankruptcy notice. Such a notice could not be issued against her, because the form of notice prescribed by bankruptcy law required a judgment against the debtor personally, while a judgment against a married woman in the *Scott* v. *Morley* form was against her separate property (*Re Lynes ; ex parte Lester & Co.* [1893] 2 Q.B. 113).

The Bankruptcy and Deeds of Arrangement Act, 1913, s. 12, extended the law in three respects. First, a married woman could be made bankrupt if carrying on a trade or *business* (the word " business " is more comprehensive than " trade ") ; secondly, it was sufficient if the married woman was in trade or business with her husband ; thirdly, a bankruptcy notice could be issued against her on a final judgment or order as though she was personally liable to pay the judgment debt or sum ordered to be paid, whether or not expressed to be payable out of her separate property. Section 125 of the Bankruptcy Act, 1914, repealed and re-enacted this provision of the 1913 Act.

As to the construction of the words " carrying on trade or business," a married woman does not cease to carry on business by closing her shop so long as there remain unpaid debts incurred while carrying on business in the strict sense of the words (*Re Clark ; ex parte Pope and Owles* [1914] 3 K.B. 1095).

Since the Law Reform (Married Women and Tortfeasors) Act, 1935, a married woman is subject to bankruptcy law and to the enforcement of judgments and orders in all respects as if she were a *feme sole*, with the proviso in s. 4 (1) (*c*) that no judgment or order against a married woman not in trade or business in respect of a contract entered into, or debt or obligation incurred, before the passing of the Act, can be enforced in bankruptcy or otherwise than against her property. Consequently, a married woman can now be made bankrupt, whether or not she is carrying on trade or business, and a bankruptcy notice can be issued against her subject to the above proviso (*Re a Debtor* [1938] Ch. 654).

Persons of unsound mind.—The Bankruptcy Acts, 1914–1926, do not expressly provide either that a person of unsound mind can be made bankrupt, or that he cannot be so adjudicated. There are, however, certain provisions in the 1914 Act and in the Bankruptcy Rules which indicate that such a person can be adjudicated bankrupt, and the question is also covered by a number of decisions under the earlier Acts, decisions which arose out of the doubt as to the validity of adjudications against persons subject to mental disability. The legal position has been clarified by the decision of the Divisional Court in *Re a Debtor* [1941] Ch. 487, where the earlier cases were reviewed and the following principles laid down or approved :—

(1) A person of unsound mind so found by inquisition can be made bankrupt on a petition presented by his committee acting under the direction of the Court in Lunacy (*Re James* (1884), 12 Q.B.D. 332).

(2) A person of unsound mind, whether so found by inquisition or not, can be adjudicated bankrupt with the consent of the Court in Lunacy (*Re a Debtor* [1941] Ch., at p. 491).

(3) A person of unsound mind, whether so found by inquisition or not, can be adjudicated bankrupt without the concurrence of the Court in Lunacy where the act of bankruptcy was committed before the debtor came under the jurisdiction of the Court in Lunacy (*Re a Debtor* [1941] Ch., at p. 491).

The petitioning creditor is, of course, required to prove that an act of bankruptcy was committed within the preceding three months. This is a matter of proof. A person of unsound mind is incapable of committing an act of bankruptcy which involved intent on his part (*Re Cahen ; ex parte Cahen* (1879), 10 Ch. D. 183), but the question of ascertaining intent does not arise where the act of bankruptcy was committed before the debtor came under the jurisdiction of the Court in Lunacy (*Re a Debtor, supra*). Another point which should be noted is that a person of unsound mind, not so found by inquisition, is deemed to have recovered his sanity on obtaining his discharge from a mental home and is thus capable of committing an act of bankruptcy involving intent (*Re Belton* (1913), 108 L.T. 344).

I. H. C.

MATRIMONIAL CAUSES AND THE LAW REFORM ACT, 1949—II

NULLITY—JURISDICTION

QUESTIONS of jurisdiction and choice of law arising in nullity proceedings are considerably more complex than those arising in divorce proceedings, discussed in a previous article, and this is so for three reasons. Firstly, in matters of divorce there existed, at any rate since 1894, a firm rule that the basis of jurisdiction was domicile, and whilst this, as we have seen, had its defects, it was at least a foundation upon which to build. Secondly, in nullity matters there exists a distinction between void and voidable marriages. Thirdly, annulment was recognised by both pre-Reformation and post-Reformation ecclesiastical courts whose jurisdiction was founded in residence, whilst dissolution was not so recognised and so had no legacy of ecclesiastical precedent and practice.

There are three bases upon which jurisdiction can be assumed : place of celebration, place of domicile of either or both parties, or place of residence of either or both parties ; and the extent to which these were adopted before 1949 is considered below.

Marriage Celebrated in England

There is ample authority for saying that an English court has jurisdiction to annul a void marriage celebrated in England where the validity of the ceremony is in issue (e.g., *Hussein* v. *Hussein* [1938] P. 159 and *Srini Vasan* v. *Srini Vasan* [1946] P. 67). Some doubt at one time existed whether the jurisdiction extended to a voidable marriage. On principle it is submitted that it should not. It is one thing for the courts of the *lex loci celebrationis* to pronounce upon whether formalities, etc., were observed, and another to pronounce on matters not connected at all with the ceremony. The view that no such jurisdiction exists was adopted by Somervell, L.J., in *Casey* v. *Casey* [1949] P. 420, at p. 433, and, with respect, it appears to be a sound one.

Domicile of the Parties

Where both parties are domiciled in England there can be no doubt that the English court has jurisdiction to annul, whether the marriage is void or voidable (*Salvesen* v. *Administrator of Austrian Property* [1927] A.C. 641, at p. 670, *per* Lord Phillimore). But it must not be forgotten that whilst, in the case of a voidable marriage, the woman will acquire the domicile of the man on marriage this will not be so in the case of a void marriage ; so if a void marriage is celebrated between a domiciled Englishman and a foreign domiciled woman she will not obtain an English domicile except as a domicile of choice the acquisition of which must be shown in the usual way.

Hence it is possible for the parties to have separate domiciles and it remains to be seen whether the domicile of one party alone is sufficient. There have been several cases where a domiciled Englishwoman has gone through a ceremony of marriage with a foreign domiciled man and successfully invoked the jurisdiction of the English court to have the marriage annulled. Such authorities are *White* v. *White* [1937] P. 111, and *Mehta* v. *Mehta* [1945] 2 All E.R. 690. The earlier case was rendered less valuable as an authority by reason of the fact that it was doubtful whether domicile or residence was the basis of jurisdiction, but Lord Greene, M.R., in *De Reneville* v. *De Reneville* [1948] P. 100, at p. 113, took the view that it was determined on the basis of domicile. The whole matter was discussed at length in *De Reneville* v. *De Reneville*, and it now seems safe to say that jurisdiction does exist on the ground of the English domicile of the woman where she has retained such domicile throughout —that is to say where the marriage was void. An attempt was made in *De Reneville* v. *De Reneville* to extend the principle to cases where the marriage was voidable by urging that the woman proleptically resumed her English domicile in advance of the decree of nullity which she hoped to obtain. This ingenious argument was rejected by Lord Greene, M.R., at p. 111. It may be mentioned here, however, that in *De Reneville* v. *De Reneville* it was decided that the question whether the marriage was void or voidable fell to be determined by what may be described as the proper law of the marriage and not necessarily by English law, but this is a matter of choice of law, which will be referred to later, and which may be affected by the provisions of the 1949 Act.

There is less direct authority as to the sufficiency of the domicile of the man alone, as will be the case where a petition is presented by a domiciled Englishman who contracts a void marriage with a woman domiciled abroad who does not obtain an English domicile of choice. There is no reason to suppose that such grounds of jurisdiction are any less valid than the domicile of the woman alone, and it would seem that *Wolfenden* v. *Wolfenden* [1946] P. 61 is some authority for the proposition that the court will have jurisdiction in such a case.

Residence of the Parties

There can be little theoretical basis for allowing residence as distinct from domicile of either or both parties to be a ground upon which jurisdiction may be assumed, but the existence of such ground has been canvassed with some success, either on the argument of convenience or on the argument that the old residential jurisdiction of the ecclesiastical court was taken over by the Court of Matrimonial Causes in 1857. It is not proposed to pursue the academic objections to such jurisdiction but to endeavour to ascertain how far it exists or has existed in practice.

In *De Reneville* v. *De Reneville, supra*, at p. 116, Lord Greene, M.R., said that he would assume for the purposes of his argument that the residence of both parties was sufficient to found jurisdiction, but it must not be thought that this was for anything more than the purposes of argument and in fact the question was expressly left open in *Salvesen's* case, *supra*, in *De Reneville* v. *De Reneville* itself and in *Casey* v. *Casey, supra*, although in the latter case Somervell, L.J., thought that there might be considerable reasons of convenience for allowing such a ground of jurisdiction. But, as stated, the matter has been left open until it arises, and in view of the provisions of the 1949 Act it may well remain open for some considerable time.

The next situation to consider is that where it is sought to found the jurisdiction on the residence of the petitioner only and not the respondent. At one time there was authority for saying that such might be sufficient, but the matter was considered in *De Reneville* v. *De Reneville, supra*, by Lord Greene, M.R., at pp. 116–118, and by Bucknill, L.J., at p. 123, and the sufficiency of such grounds distinctly rejected.

It is hardly possible that the converse position—residence of the respondent but not the petitioner—could ever arise, as the presentation of the petition almost presupposes the residence of the petitioner.

Matrimonial Causes Act, 1937, s. 13

This section applies to nullity proceedings as it does to divorce proceedings and the same comments (see *ante*, p. 677) will apply.

Matrimonial Causes (War Marriages) Act, 1944

This Act also applies to nullity in the same manner as to divorce (see *ante*, p. 677).

Law Reform (Miscellaneous Provisions) Act, 1949

By s. 1 (2) the provisions of s. 1 (1) (see *ante*, p. 677) apply to proceedings for nullity as they apply to proceedings for divorce but without prejudice to any jurisdiction existing apart from the Act.

Summary

It will be seen that there are a bewildering number of grounds upon which nullity jurisdiction can be founded. It seems that nullity jurisdiction will exist on the same grounds as divorce jurisdiction (see *ante*, p. 678) and in addition—

(7) Where the petition is based on the invalidity of the marriage ceremony jurisdiction will exist if the marriage was celebrated in England.

(8) Where the man only is domiciled in England. This basis will only apply to void and not to voidable marriages, as in the latter case the woman will *ex hypothesi* be also domiciled in England.

(9) Where the woman only is domiciled in England at the time of the petition. Whether or not the woman is so domiciled may depend on whether the marriage is void or voidable by its proper law.

(10) Possibly where both parties are resident but not domiciled in England at the time of the suit.

Nullity—Choice of Law

The problem of the correct choice of law in nullity proceedings is one of very considerable difficulty, and it is not proposed here to discuss the very many academic problems involved. The matter is necessarily complex, since the grounds upon which a marriage may be annulled are various and the distinction between void and voidable marriages must be taken into account. Confusion is made the worse confounded by the strange policy of the Legislature in making wilful refusal to consummate the marriage a ground for annulment rather than dissolution. As before, it will be convenient to consider first the law as it stood before the 1949 Act and then to consider what may be the effect of that Act.

Common Law

In the case of a marriage which is alleged to be void by reason of some defect in the observance of formalities there can be little or no doubt that the correct law to be applied is the *lex loci celebrationis*. The certainty and simplicity of this rule, however, should not be allowed to blind one to the very difficult problems of classification which may be involved in deciding whether the question in issue is one of formality or of capacity of one of the parties (contrast *Simonin* v. *Mallac* (1860), 29 L.J. P. & M. 97, with *Ogden* v. *Ogden* [1908] P. 46).

In the case of a marriage which is alleged to be void for some reason, such as the capacity of one of the parties, other than the validity of formalities, the choice would appear to lie between the law of the pre-marriage domicile of the party concerned and the law of the matrimonial domicile in reference to which the parties may be supposed to have contracted. A powerful argument in favour of the latter alternative is to be found in Cheshire's Private International Law, 3rd ed., p. 266 *et seq.*, and in view of the remarks of Lord Greene, M.R., in *De Reneville* v. *De Reneville, supra*, at p. 114, it is thought that this latter alternative would now be preferred.

In the case of a voidable marriage the parties necessarily share the same domicile and it is strange indeed to find questions of status decided by any other law than the common *lex domicilii*. Unfortunately, in two cases, *Easterbrook* v. *Easterbrook* [1944] P. 10, and *Hutter* v. *Hutter* [1944] P. 95, this is exactly what was done. English law was the *lex fori* and the *lex loci celebrationis*, and it allowed annulment in the circumstances pleaded; the parties were domiciled in a province of Canada which did not allow such a remedy in such circumstances. The court proceeded to apply the domestic law of England and granted decrees which could not have been obtained in the courts of the domicile. As pointed out by Cheshire, *op. cit.*, at p. 459, such a choice is indefensible whether the test applied be principle, convenience or justice. It may be said that in neither case was evidence given of the *lex domicilii*, so that the cases could be explained on the footing that the *lex domicilii* was presumed to be the same as the *lex fori*, but there is no indication of this in the judgments.

Law Reform (Miscellaneous Provisions) Act, 1949

By s. 1 (4) wherever the court has jurisdiction by virtue of s. 1 thereof, or by virtue of s. 13 of the 1937 Act, or by virtue of the 1944 Act, the issues are to be determined by the law which would be applicable if both parties were domiciled in England at the time of the proceedings.

In the case of a marriage alleged to be void by defect of observation of formalities or by reason of the invalidity of the ceremony this provision can be of no effect. The law to be applied is the *lex loci celebrationis*, no matter what the domicile of the parties may be.

In the case of a marriage alleged to be void for some other reason it appears that the provision is still of no effect. One or other of the two alternative choices indicated above (law of the pre-marriage domicile or law of the intended

matrimonial home) would be applied whether or not the parties were domiciled in England at the time of the proceedings. Thus, if a Frenchman and an Italian woman went through a ceremony of marriage with the intention of setting up home in Spain but subsequently acquired a domicile of choice in England it cannot be said that the acquisition of such a domicile would affect the choice of law on a petition for annulment based on the incapacity of one of the parties.

In the third case of voidable marriages the 1949 Act adopts the principle or lack of principle involved in the *Easterbrook* and *Hutter* cases, *supra*. Thus, to illustrate the effect by what is perhaps an extreme example : A Frenchwoman marries a Ruritanian with the intention of residing with him in Ruritania. The law of Ruritania does not recognise divorce or annulment in any shape or form. If the woman establishes three years' "ordinary residence" in England the English courts and the English grounds of nullity are open to her. She might have difficulty in proving her allegations but this difficulty might disappear if the man was not unwilling to see an end to the marriage. Considerable problems are likely to arise as to how far foreign courts will be prepared to recognise such decrees as may be obtained under the 1949 Act, but that is a question beyond the scope of this article.

There may be circumstances in which jurisdiction to hear a petition for the annulment of a voidable marriage may exist independently of the 1949 Act. Where the parties are domiciled in England then the existence of s. 1 (4) will make no difference. Where the parties are not so domiciled, as would be the case where a petition for annulment is brought under the 1944 Act by a woman who has not been ordinarily resident for three years or where a petition is brought on the ground of common residence, then the choice of law is unaffected by s. 1 (4) and will depend on whether or not *Hutter* v. *Hutter, supra*, is followed. G. B. G.

Costs

ARBITRATIONS—II

We discussed in our last article the salient points of the Arbitration Act, 1950, in relation to costs, and we will now consider some of the principles which affect costs in arbitrations.

We have seen that costs may be, and normally are, awarded to be paid by one party to another, and we noticed further that when such a direction is contained in the award then, subject to any provision in the award to the contrary, the costs so awarded will be taxed in the Supreme Court Taxing Office (see s. 18 (2) of the Act). This being so, it follows that the Rules of the Supreme Court will apply, with the result that the costs will be compiled according to the allowances set out in Appendix N thereto.

The allowances set out in the appendix will, of course, have to be adapted to meet the circumstances of an arbitration, since Appendix N was compiled in connection with actions in the High Court, and not all of the work done in an arbitration is comparable with the work in actions. Little difficulty, however, need arise in this respect ; and in any case it will be recalled that R.S.C., Ord. 65, r. 27 (30), provides that for any work and labour properly performed and not provided for, in respect of which fees have heretofore been allowed, the same or similar fees are to be allowed as have heretofore been allowed. Since, therefore, arbitrations were a normal part of the machinery for settling disputes long before the present Rules of the Supreme Court were compiled in 1883, although the first statutory enactment codifying the procedure of arbitrations was not made until 1889, it follows that there must necessarily have been ample precedent for allowances in respect of work peculiar to arbitrations.

As an example of an allowance that is customarily made, although no authority will be found for it under Appendix N, is the item "Instructions to Act on Arbitration." This item, which is the commencing one in the bill of costs, is normally allowed at the sum of two guineas, and it is intended to cover the cost of bringing the parties together, and into relationship on the terms of reference. Thus the solicitors will between them settle on their respective clients' behalf the details of the mode of reference, whether it shall be to a single arbitrator, or to two arbitrators, and whether there shall be representation before the arbitrator or arbitrators, and, if so, whether by counsel or by the solicitors themselves, or whether the arbitration shall be determined on documents only, with or without a stated case by each party, or an agreed joint case to the arbitrator. It will be appreciated that although a fee of two guineas for instructions may seem a generous one it may very well prove to be insufficient by the time all these details are settled, involving considerable correspondence between the solicitors and the parties, and numerous attendances.

An agreement to submit a dispute to arbitration must, if the arbitration is to be governed by the Arbitration Act, 1950, be in writing (see s. 32), and having settled the details of the mode of arbitration the next step is to draw, settle and obtain completion of an agreement of reference which may be signed either by the parties, or by their respective solicitors on their behalf. The agreement is usually drawn by the solicitor for the claimants, although there is no hard and fast rule, and it is engrossed in duplicate and signed by both parties, and each party retains a copy. The allowance for drawing the agreement is 1s. per folio, since, as soon as the parties reach the stage of agreeing to submit the matter to arbitration, it ceases to be non-contentious business and becomes litigious, so that Sched. II to the General Order, 1882, no longer applies to the costs. Moreover, the Appendix N allowance of 4d. per folio for engrossing then applies as well, and not the 8d. allowed under Sched. II.

When the reference is to be to a single arbitrator the latter is usually named in the agreement, and before the agreement is actually completed it is necessary to approach the proposed arbitrator in order to get his consent to act. For this an attendance is normally permitted, the fee being 6s. 8d.

On the other hand, the reference may be to two arbitrators, one to be appointed by each party, in which case the items in the bill will include an attendance on the proposed arbitrator selected by the client to obtain his consent to act, and a notice to the other side as to the arbitrator appointed, for which the customary 4s. is allowed.

Sometimes there are pleadings, as in an action, and discovery of documents, and the charges in such a case will conform to the normal allowances for such items.

Where the reference is to a single arbitrator on documents only it is customary for the two opposing solicitors to inspect each other's documents, and then to make up an agreed bundle. In such a case, in addition to the normal items for inspecting documents and giving inspection, there will be an attendance when the bundle is agreed and paged. A copy of the agreed bundle is then made for the arbitrator and the

copying of this is normally done by the claimants in the arbitration.

As we have noticed, it is sometimes agreed that the arbitrator shall be provided with a stated case by each party to the arbitration, and in these circumstances there will be a charge in each side's bill of costs for instructions for case, the fee for which will, of course, depend entirely on the circumstances, and will cover all attendances on the party obtaining the documents and information, and the perusal and consideration of such documents. The fee allowed as instructions for case is somewhat analogous to instructions for brief on trial, and much the same considerations will apply, for this is another fee for which no allowance is specifically provided by Appendix N. Item 82 of Appendix N, dealing with the item "Instructions for Brief," states that "such fee may be allowed as the taxing officer shall think fit, having regard to all the circumstances of the case." The circumstances of the case must, it is submitted, include such considerations as the magnitude of the amount involved, and the importance or otherwise of the questions arising, and, indeed, support will be found for this proposition in the case of *London, Chatham & Dover Railway* v. *South Eastern Railway* (1889), 60 L.T. 753. As we have stated, very similar considerations will apply in dealing with the item of "Instructions for Claimant's (or Respondent's) Case."

The fee which will be allowed for drawing the case is 1s. per folio, but this fee will only be allowed for the drawing of the observations, and if documents are copied into the case then the normal allowance for copying, that is 4d. per folio only, will be allowed in respect of that part. The case will be copied for the arbitrator, and the copy, together with a copy of the agreed bundle of documents, will be delivered to the arbitrator, the fee for the attendance being allowed at 6s. 8d. Notice will be given to the other side that the claimant's (or respondent's) case has been delivered and a demand will be made to exchange copies of the respective cases. A fee of 6s. 8d. will be allowed for the attendance when the cases are exchanged, and each side will be allowed a fee of 4d. per folio for perusing the other side's case. Normally the claimants will be entitled to deliver a reply to the respondent's case, and the allowance for drawing and copying this will be 1s. 4d. per folio.

Sometimes an agreed case is put before the arbitrator, and in these circumstances it is usual for the claimant's solicitors to draw the case and to send a copy of the draft to the respondent's solicitors for approval or amendment. The fee normally allowed for the perusal of the draft is 6s. 8d. or 4d. per folio, whichever is the greater. The respondent will then approve the draft case, or amend it, and for the amendments the solicitors will be entitled to a fee of 1s. per folio. The respondent's solicitor will then return it to the claimant's solicitor and, when finally approved, the case will be copied by the claimant's solicitor and delivered to the arbitrator, together with a copy of the agreed bundle of documents.

As we have stated, instead of the arbitrator adjudicating on the documents, with or without an agreed case, or cases delivered by the respective parties, it may be agreed between the two parties in dispute that the arbitration shall proceed on pleadings, and that *viva voce* evidence shall be called, and that the respective parties' cases shall be argued before the arbitrator by legal representatives, either the parties' solicitors or counsel. In this event the bill of costs in respect of the arbitration will follow much on the same lines as a bill of costs in an action in the High Court, and instead of cases delivered by the respective parties there will be the usual pleadings.

Where the parties are to be represented before the arbitrator by their respective solicitors, instead of by counsel, then the solicitors will charge in their bill of costs an item "Instructions to Conduct Arbitration without Counsel," and the allowance will conform to that which would normally be allowed as instructions for brief. A special fee will also be allowed to the solicitor for appearing and conducting the case before the arbitrator, and the fee allowed will depend on the length and importance of the arbitration and the number of witnesses to be examined and cross-examined. In a normal case with witnesses an allowance of four or five guineas a day of five hours is not unreasonable, although, as we have stated, the fee is within the discretion of the taxing master, for no provision is made for such a fee under Appendix N.

J. L. R. R.

A Conveyancer's Diary

DETERMINATION OF INTERESTS LIMITED TO CEASE ON DEATH—III

THE primary condition of s. 43 (1) of the Finance Act, 1940, is contained in its opening words, "where an interest limited to cease on a death has been disposed of or has determined," i.e., it is an overriding condition of the application of this section as a whole to any given transaction that there should have been a disposition or determination of the interest in question. The opening words of the section containing this requirement have not been changed by the Act of 1950, and if therefore (as we have already seen) the acquisition by the life tenant of the interest in remainder expectant upon the determination of his life interest does not constitute a "determination" of the life interest by reason of its merger in the interest in reversion, all the provisions which follow are irrelevant. It is thus irrelevant whether the transaction took place within a period of five years of the life tenant's death or not, whether the transaction was for value or not, and whether the transaction was one which involved a disposition of any interest expectant upon the life interest (i.e., the interest in remainder). The suspicion that there is something in the new s. 43 which was designed to reverse the present rule and to bring within its scope the kind of merger we have so far been considering turns out, therefore, on examination, to be unfounded.

But a life interest can be merged in the remainder expectant upon it not only by the acquisition by the life tenant of the remainder, but also in the converse case by the acquisition by the remainderman of the life interest. An acquisition of the latter kind necessarily involves the surrender of his life interest by the life tenant, and such a surrender is, by definition, a "determination" of that interest for the purposes of s. 43. Accordingly, duty will be payable in the normal case on the whole of the property in which the life tenant had a life interest on the death of the life tenant within a period of five years from the surrender of his life interest, and duty will also be payable in such circumstances even if the surrender was made outside the statutory period of five years, unless it can be shown that *bona fide* possession and enjoyment of the property in which the life tenant had his life interest was

assumed immediately after the surrender by the remainderman and thenceforward retained to the entire exclusion of the former life tenant and of any benefit to the latter by contract or otherwise.

The ambit of this exception, which is contained in s. 43 (2) (*a*) of the Act of 1940, is affected by s. 43 (2) of the Act of 1950, which, broadly speaking, extends the meaning of the word " benefit " in this provision. Before the present Act was passed, if A, outside the statutory period of five years before his death, surrendered his life interest to the remainderman B in consideration of £10,000, and A then used the £10,000 he received to buy himself an annuity to compensate him for the loss of his life interest, the transaction was considered to fall outside s. 43. In such circumstances A certainly derived a benefit (his annuity), but that benefit did not arise as the result of any contract with the remainderman, and as the words " or otherwise " in the phrase " to the entire exclusion . . . of any benefit . . . by contract or otherwise " were construed as requiring that any benefit, to come within the provision, should be *ejusdem generis* with a benefit by contract, the purchase by A of his annuity was regarded as irrelevant for the purpose of determining whether the section applied or not. If, in such circumstances, A had invested his £10,000, or spent it in his lifetime, s. 43 clearly would not have applied, for in the one case the £10,000 would have been included in the property passing on A's death and become subject to duty in that way, and in the other there would have been no property on which to levy duty ; similarly, the purchase of the annuity was regarded as A's own affair.

Now, however, s. 43 (2) of the Act of 1950 provides that in such a case as is now under consideration *bona fide* possession and enjoyment of the property in which the life interest subsisted is not to be deemed to be assumed immediately after the disposition or determination in question and thenceforward retained to the entire exclusion of the former life tenant and of any benefit to him by contract or otherwise " if at any time thereafter he has a benefit by virtue of any operations associated with the disposition or determination." The expression " associated operations " has the meaning given to that expression by s. 59 of the Act of 1940, the disposition being one of those operations (s. 43 (3) (*a*) of the Act of 1950).

The important question which arises as a result of the gloss which has thus been put upon s. 43 of the Act of 1940 is whether, in the example given above, the purchase by A of some continuing benefit (such as an annuity), which escaped the charge to duty under the original s. 43 if the surrender of the life interest was made outside the statutory period, is now caught by the section in its new form. This is a matter on which an opinion expressed without the assistance of any decided case on, or even near, the point may seem rash, but I think it is clear that s. 43 (2) of the Act of 1950 was designed to catch within its net the sort of transaction exemplified above, and, moreover, that it has in fact so caught it.

Section 59 of the Act of 1940 defines " associated operations " as (amongst other things) operations which affect the same property, or operations one of which affects some property and the other or others of which affect property which (either directly or indirectly) represents that property, and it is immaterial for this purpose whether the operations are effected by the same person or whether they are contemporaneous or not. Applying this definition to the example under consideration, the operations which have to be examined are (*a*) the surrender of the life interest, and (*b*) the purchase by the life tenant of an annuity with the money received in consideration of the surrender of his life interest. The latter is the operation by virtue of which the life tenant " has a benefit " for the purpose of s. 43 (2) of the Act of 1950, and there can be little doubt that, when looked at in the light of the relevant provisions, the surrender and the purchase are now " associated operations " for the purpose of attracting a charge to duty under s. 43 of the Act of 1940.

These notes on the new s. 43 are not intended to be exhaustive : the cases considered in relation to these provisions in this " Diary " and the preceding ones on the same subject are the simplest that can occur, and there are obviously many variations of those cases where the applicability of the broad principles which may be said to emerge from an examination of s. 43 will often be a matter of great difficulty and doubt. But within the limits I have set myself I hope these observations will help anyone who has to approach the important and extremely practical question of the impact of estate duty on dealings connected with limited interests without the advantage of any previous detailed study of the subject.

" A B C "

Landlord and Tenant Notebook

DILAPIDATIONS : NOMINAL REVERSIONS

M, WHOSE repairing lease, granted by H, is shortly to expire, has at some time sub-let the premises to S—the underlease reproducing the repairing covenants—for the residue of his term less the last three days thereof. M sends a surveyor to examine the premises for the double purpose of preparing a schedule of dilapidations against S and disputing one which he may himself receive from H ; but when payment of the amount assessed to be due is demanded of S, the latter refers M to the Landlord and Tenant Act, 1927, s. 18 (1) : damages for breach of a covenant to leave premises in repair at the termination of a lease (by s. 25 (1) this includes an underlease) shall in no case exceed the amount, if any, by which the value of the reversion in the premises is diminished owing to the breach of such covenant.

M may well feel tempted to reply that S knows very well that that enactment was not intended to apply to the circumstances of their case ; it was meant, as shown by the concluding part of the subsection (no damage shall be recovered for a breach of such covenant to leave premises in repair at the termination of a lease if it is shown that the premises would at or shortly after the termination of the tenancy have been or be pulled down), and by the exposition given by Lord Greene, M.R., in *Salisbury* (*Marquess*) v. *Gilmore* [1942] 2 K.B. 38 (C.A.), to prevent the unjust enrichment of a lessor who enforced a covenant to do repairs for which he would have no use. S may rejoin that the information leaves him cold ; he is concerned only with the main provision, and would M please let him know at what figure he values his reversion ?

Before examining the position further, it may be useful to consider what the position would be if there were no Landlord and Tenant Act, s. 18 (1). The nearest to a leading case on the point is *Conquest* v. *Ebbetts* [1896] A.C. 490, in which a mesne tenant sued for damages for disrepair some

three and a half years before the mesne term was due to expire, that event to be followed ten days later by the expiration of the head term. The underlease, granted in the eleventh year of the sixty-one year head lease, was on the face of it an underlease, and the premises would yield about £100 more than the rent reserved. The contention put forward on behalf of the sublessee was that he was not obliged to indemnify the mesne lessee, the full market value of whose reversion (including the right to receive the improved rent for the rest of the term) did not, when the writ was issued, exceed £350. Damages for disrepair when the action was brought during the term, it was argued, were not measured by reference to cost of repair but by reference to *diminished value of reversion*. Possibly to the defendant's discomfiture, the speech delivered by Lord Herschell actually accepted this principle as the correct one, but upheld an award of £1,305 (arrived at by ascertaining cost of repair, £1,500, and allowing a rebate because the lease still had three and a half years to run) on the following reasoning: "... if the test be applied of inquiring how much the value of the respondent's reversion has been diminished by the breach of covenant, a test for which I understand the appellants to contend, I cannot see that there has been any error in the assessment of damages. If the premises were now in good repair, the reversion of the respondents would now secure them the improved rent of £100 a year to the end of the term, without any liability on their part, unless it were to the extent to which repairs subsequently became necessary. As matters stand, they can only receive this rent subject to the liability of restoring the premises to good repair, so that they may in that condition re-deliver them to their lessor. The difference between these two positions represents the *diminution in the value of their reversion* owing to the breach of covenant, and on this basis the damages appear to me to have been properly assessed."

The difficulty of applying this reasoning to the hypothetical case of M and S lies in the fact that the claim was made not just before, but some three and a half years before, the end of the term. No doubt S would readily seize upon this feature and the question would then be whether it was a case of distinction without difference. S might well seek to emphasise the "they can only receive this rent subject to the liability of restoring the premises to good repair." To which M might well make the answer that "nominal reversion" is not a term of art, and it is immaterial whether the value of the head lease, the premises being in repair, be £350 or 3½d.; that the contention that damages could not exceed such a value was definitely rejected in *Conquest* v. *Ebbetts*, though credit was given in respect of the unexpired residue; and that he (M) is quite prepared to give such credit in this case.

In my submission, this answer should be effective; *Conquest* v. *Ebbetts* shows that a reversion may have a negative value, in the same way as a not fully paid-up share may have such a value. It may be recalled that before landlords took to insisting on express covenants from assignees, the latter frequently got rid of their liabilities by assigning over to men of straw; indeed, Cottenham, L.C., considered that the executor of an assignee might be under a legal and moral duty to take this course (*Rowley* v. *Adams* (1839), 4 Myl. and Cr. 534). A reversion is capable of being valued though breach of covenant has made it burdensome instead of beneficial to its owner.

This process was in fact carried out in *Conquest* v. *Ebbetts*, and the circumstance that in the case of a so-called "nominal" reversion there would be no allowance for the time to elapse before the end of the underlease would in my submission make no difference. So when one seeks to apply the Landlord and Tenant Act, 1927, s. 18 (1), to such a situation—which, it should be remembered, does not create or lay down any new measure, but merely prescribes a maximum—there seems to be no reason to suppose that an underlessee could avoid liability by alleging that the mesne lessor's reversion is worth little or nothing and therefore cannot be damaged.

The meaning of the word "reversion" in the subsection has been gone into on at least two occasions, though not in connection with so-called "nominal" reversions. In *Terroni and Necchi* v. *Corsini* [1931] 1 Ch. 515, the facts were that in 1929 three partners held a lease due to expire at Lady Day, 1930, and had been granted a reversionary lease for fourteen years from that date at a higher rent, when they made an agreement to dissolve the partnership, assets to be sold to the highest bidder among them and then divided. The agreement provided, *inter alia*, that the defendant should pay all trade debts and other liabilities whatsoever in respect of the premises and business down till the date of completion, and the question arose whether damages for disrepair which might be payable were to be assessed on the basis of depreciation in market value of the reversion to the current lease or of the reversion to the one which was to follow. Maugham, J., held that the subsection had not made the grant of the further lease a relevant factor: the reversion indicated was that expectant on the existing lease. In *Hanson* v. *Newman* [1934] 1 Ch. 298 (C.A.), a tenant who did not resist forfeiture based on disrepair, or liability for damages for such, contended that he was entitled to set-off some £475 which the plaintiff stood to gain as a result of obtaining possession some four years before the lease would have come to an end if not forfeited. His contentions failed because, as Romer, L.J., put it, the section required that "the value of the freehold had to be ascertained subject to so much, *if any*, of the term of the lease as remained unexpired" and the election to determine had left no residue.

Rent Tribunals: Withdrawal

Writing on the above subject in the "Notebook" of 2nd September, I mentioned the report of an application for a writ of certiorari, *R.* v. *Wanstead, etc., Rent Tribunal; ex parte Clarke*, which I described as having arisen out of an application under the Landlord and Tenant (Rent Control) Act, 1949. The language used in the judgment left some doubt whether the original proceedings had been such an application or had been a reference under the Furnished Houses (Rent Control) Act, 1946, but I had given it the above description on the strength of information resulting from due inquiry. A correspondent has now informed me that the said proceeding was in fact a reference under the Furnished Houses, etc., Act, and while the article itself consisted mainly of a discussion of the position of one who seeks to withdraw under both Acts, and of comment on the omission of regulations made under both to contain what they (or one of them) had been said to contain, I did suggest that an "inherent" right to withdraw might be recognised in the case of applications under the 1949 statute (which, unlike references under that of 1946, must be instituted by one of the parties to the contract). Our correspondent, contrasting the provision "... unless ... it is withdrawn ... the tribunal shall consider it" of s. 2 (2) of the 1946 Act with the "... on any such application the tribunal shall determine that rent" of s. 1 (1) of the 1949 Act, contends that "the operative words 'shall determine' are unmistakably clear." Undoubtedly, there is much force in this argument; but I would respectfully suggest that it may not be conclusive: if an application

can be and has been withdrawn there is nothing for the tribunal to get its teeth into. Consideration of a number of provisions and authorities dealing with withdrawal of actions, of petitions, and other proceedings warrants the proposition that statutes and rules of court, when they do deal with withdrawal, are concerned with regulating, modifying, or negativing (in some cases) the right rather than with creating it.

R. B.

HERE AND THERE

ODD MAN IN

THEY say that two heads are better than one (though sometimes one may be pedantically inclined to ask: Which two?) and that in a multitude of counsellors there is safety. So on a purely arithmetical basis there was much to be said for the judge who, trying a confusing case in which witnesses literally by the dozen were called on either side, made a swift calculation and found for the majority. So too, by parity of reasoning, the Scottish system of fifteen jurors would automatically be superior to our twelve. (To the best of my information it is still fifteen, though in these days of change, accountable and unaccountable, one can never be quite sure.) On fifteen the upholders of Rugby maintain a confident, if not wholly unchallenged, sense of superiority to Association, though they say that seven-a-side Rugby is gaining adherents for its swiftness. I know not what maturer experience will demonstrate in that field but juries of seven have not, on the whole, been found to possess the more substantial qualities of the traditional number. The late Alpers, J., who had considerable opportunities of watching them at work in New Zealand, came to the conclusion that seven was too few to embody the average common sense of the community. With seven, thick-headedness broke in with more alarming frequency. These reflections were inspired by the tale of the thirteenth juror of Chelmsford, related to me by a friend. I missed it in September in the Long Vacation and perhaps you missed it too. During a trial at the quarter sessions there, twelve jurors were sent out to consider their verdict and thirteen came back, the thirteenth man standing self-consciously behind a fully occupied jury box. The ways of the law are notoriously confusing to a layman. This one, belonging properly to a jury in another court, had apparently missed his way. Though initially puzzled by the unfamiliar faces of his new colleagues, he modestly told himself that perhaps he was "just seeing things" and sat discreetly behind them among the jurors in waiting. When they went out he went out; when they came back, so did he; but instead of welcoming this additional reinforcement of the jury team's unanimity, the chairman put the accused back for retrial at the next sessions. It was treated as if the twelfth man had absent-mindedly gone out to field at Lord's and no one at first had counted beyond eleven, or Big Ben had added another stroke to noon. Still, said the surplus man, "everyone was so nice about it all," and indeed, waiving the lack of form in this case and the scruples of the superstitious, there is much to commend thirteen or any greater odd number of jurors and, as in Scotland, majority verdicts. It is not in the nature of man to agree anywhere, save apparently in a court of justice, and even there some of those unanimous verdicts ring more hollow than a thirteenth stroke.

DOG'S DAY

THE story of the good dog of Inverness, snatched by the sapient judgment of the Lords of Session from the doom of death pronounced on him by the dour magistrates of his native city, will have been read with satisfaction by every dog north of the Border. The recognition of his vested interest in a bone in possession, giving him a right to defend it *vi et dentibus*, should he have good cause to suspect, even erroneously, that a stranger is proposing to treat it as a bone of contention, produces a situation of a simplicity rare in legal relationships. Doubtless he must use no more force than is necessary but clearly the good-tempered animal in question, even under provocation so serious, kept within those decent limits. In this connection I seem to remember a case in the Law Reports, applying the doctrine of provocation, in which it was held that one who made grimaces at a dog in a motor car had only himself to thank if the insulted animal retorted by breaking a window in his face.

TRANSATLANTIC TOUCH

IN matters like these the United States have a way of going one better, and just about the time that the dog from Inverness was getting off scot-free in Edinburgh news came from Oakland (California) that an "educated" cat was suing a dog for the equivalent of about £185 damages for grievous bodily harm. The plaintiff's accomplishments (as set out by his next friend) include dancing, standing upright, and rapping on the window when desirous of entering the house. No doubt the defendant, if competently advised, will be able to make a bid to establish in America the humane doctrine of provocation, or maybe the immemorial customs of cat and dog life. American law is kind to animals. Already, if the laws of some of the States are correctly reported, they are capable of enjoying property rights in the estates of their deceased owners (perhaps as tenants in tail). One sometimes feels that the raw materials of litigation are richer in the States than over here. Take the masonry contractor who is suing a ten-cent store for $20,000 damages for selling him an overlength tape measure. He claims that as a result directly flowing from that cause he has built a house and six garages a foot too high and too wide. Or take the gentleman in Oklahoma who is suing a clothing shop, where he had an account outstanding, for $10,000 damages for causing him embarrassment in the home by trying out a new way to collect old debts. While he was at business a postcard arrived saying: "Dear Bert. Phone me to-day. Evelyn," and giving a telephone number. The plaintiff's wife almost left him on the spot and, disappointingly enough, when he called the number, Evelyn turned out to be the debt collecting representative of the clothing shop. Creditors the world over will eagerly watch for the judgment.

RICHARD ROE.

BOOKS RECEIVED

Gibson's Probate Law. Fifteenth Edition, by H. GIBSON RIVINGTON, M.A. (Oxon.), and H. J. B. COCKSHUTT, Solicitor, Honours. 1950. pp. xli and (with Index) 201. London: Law Notes Lending Library, Ltd. 30s. net.

A Guide to Juvenile Court Law. By GILBERT H. F. MUMFORD, Solicitor, Clerk to the Justices, Luton Borough, with a Foreword by T. A. HAMILTON BAYNES, M.A., J.P., Chairman of the Birmingham Juvenile Court Panel. Third Edition. 1950. pp. (with Index) 214. London: Jordan & Sons, Ltd. 10s. 6d. net.

The Lawyer's Remembrancer and Pocket Book, 1951. By J. W. WHITLOCK, M.A., LL.B. 1950. pp. (excluding Diary) 332. London: Butterworth & Co. (Publishers), Ltd. 12s. 6d. net.

Family Inheritance. By LAURENCE TILLARD. Second Edition by P. R. OLIVER, B.A., of Lincoln's Inn, Barrister-at-Law. 1950. pp. viii and (with Index) 59. Hadleigh: the Thames Bank Publishing Co., Ltd. 7s. 6d. net.

International Law. The Collected Papers of Sir CECIL HURST, G.C.M.G., K.C.B., K.C. 1950. pp. ix and (with Index) 302. London: Stevens & Sons, Ltd. 30s. net.

REVIEWS

Kelly's Draftsman. Ninth Edition. By W. J. WILLIAMS, B.A., of Lincoln's Inn, Barrister-at-Law. 1950. London: Butterworth & Co. (Publishers), Ltd. 50s. net.

This is an excellent edition of a useful book. The contents of the previous edition, both forms and notes, have been brought up to date and many new forms have been added to meet the requirements of present-day practice; and the publishers' choice of Mr. Williams as editor is a guarantee to all who know his work in his capacity as conveyancing editor of the "Encyclopaedia of Forms and Precedents" that both the revision and the supplementation of the old matter have been more than competently done. Nobody can rival the learned editor's experience in the selection and preparation of new conveyancing forms, for he is in constant touch with the problems of conveyancing practitioners all over the country, and if a new form finds a place in these pages it is because it is really wanted. Despite the great quantity of matter it contains, this edition of "Kelly" is easy to handle, and the treatment of topics under alphabetically arranged headings, with the addition of a full and clear index, will enable the user to get at what is required with the least possible delay. Altogether, this is a book to be recommended as a thoroughly practical edition of a work which has always had a reputation for that quality.

Duties of a Company Secretary. By T. BOLTON, A.C.I.S., A.I.A.C., and PERCY F. HUGHES, F.C.I.S., A.S.A.A. 1950. London: Secretaries Journal, Ltd. 20s. net.

A new book on such a subject faces strong competition from the existing text-books, but this book has considerable merit and should find its place. It includes many useful points of practice, which by their nature show that the writers are persons with wide practical experience of their subject.

Errors are few, but without wishing to emphasise these a very bad error in regard to s. 55 of the Finance Act, 1927 (as amended) should be pointed out—it is not sufficient, as indicated on p. 331, that the shares in the transferee company are issued to holders of shares in the existing company, but also such shares must be allotted to those holders in the correct proportions. Renounceable allotment letters cannot be used in a s. 55 case.

This book will be of great value to the company secretary and to the secretarial student, although it is unlikely to find a home on more than a small percentage of legal bookshelves.

The National Health Service. By ROGER ORMEROD, M.A., B.M., B.Ch. (Oxon.), of the Inner Temple and the Western Circuit, Barrister-at-Law, and HARRIS WALKER, of the Middle Temple and the Western Circuit, Barrister-at-Law. Annotations to the National Health Service Acts, 1946 and 1949, by JOHN H. ELLISON, M.A. (Cantab.), of Lincoln's Inn and the Oxford Circuit, Barrister-at-Law. 1950. London: Butterworth & Co. (Publishers), Ltd. 27s. 6d. net.

This reprint from Butterworth's Annotated Legislation Service combines a descriptive account of the National Health Service Act, 1946, and the National Health Service (Amendment) Act, 1949, with the annotated texts of both Acts. The second half of the volume sets out the texts of the relevant statutory instruments. These are printed on pink paper, the edges of which indicate at a glance the portion of the book to which reference is required to be made. A diagram shows the administrative structure of the Service, and a map shows the Regional Hospital Areas. The subject is specialised, but the Acts have in some respects affected the general law. Sections 6 to 9 of the 1946 Act deal with the transfer of hospitals to the Minister and have been considered in cases on wills and charities. Three cases decided in 1950 are cited in the notes to the sections. Section 36 of the same Act deals with compensation for loss of right to sell a medical practice, and has been judicially considered in two cases, duly cited. After tracing the growth of the voluntary hospitals, the learned authors give a detailed survey of the Acts. There is a description of the structure and functions of the statutory bodies administering the Service, and an account of the provisions affecting consultants and general practitioners, e.g., questions of partnership, compensation, remuneration and disciplinary procedure. The book will be invaluable not only to hospital and local government administrators and their legal advisers, but also to doctors, dentists and members of the various bodies comprising the medical auxiliary services, e.g., physiotherapists and chiropodists. The date of going to press was apparently June, 1950, so that the book is as up to date as can reasonably be expected. In view of the mass of detailed information it contains, this handy volume is an excellent investment for the moderate sum for which it may be obtained.

Criminal Procedure. Reprinted from "Harris and Wilshere's Criminal Law." Eighteenth Edition. By A. M. WILSHERE, M.A., LL.B., of Gray's Inn, Barrister-at-Law. 1950. London: Sweet & Maxwell, Ltd. 15s. net.

Nearly all previous text-books on criminal law and procedure have been rendered out of date by the coming into force of the Criminal Justice Act, 1948, and this book, which follows closely upon the publication of the eighteenth edition of "Harris and Wilshere's Criminal Law," is a reprint, with the necessary modifications, of Books IV and V of that work.

The student who wishes to acquire a working knowledge of Criminal Procedure, without going into too much detail or indulging very deeply in technicalities, will find all he is likely to need in the 288 pages of this book.

As almost inevitably happens, however, when a wide field of knowledge is compressed into a limited space, certain omissions and inaccuracies appear. For instance, it is surprising that when dealing with separation and maintenance orders, the only mention of the power to vary an order in respect of the maintenance of a child by extending it beyond the age of sixteen should be a footnote on p. 231 which reads "See also the Married Women (Maintenance) Act, 1949, s. 2."

Surprising, too, is the omission of any explanation of s. 28 of the Criminal Justice Act, 1948, which deals with offences punishable on summary conviction or on indictment: true, the section is reproduced, in slightly abbreviated form, on p. 262, but in view of its importance and complexity a brief explanatory note would have been of more use to the reader.

There is a strange inaccuracy on p. 255, when reference is made to a power to order damages or compensation under the Probation of Offenders Act, 1907; this Act, of course, was repealed by the Criminal Justice Act, 1948, and replaced on this subject by s. 11 (2) of the new Act. Again, on p. 245 it is stated that in certain cases the court may, without convicting, release the defendant on probation; this was true under the Act of 1907, but now, by s. 3 of the Act of 1948, a probation order may only be made after conviction.

These, however, are comparatively small matters; the book itself is excellently written, and contains a mass of useful information assembled in very accessible form. It should be of real value to the student who, having studied criminal law, wishes to extend his researches to the subject of procedure.

Mr. E. M. Burton, solicitor, formerly of Lincoln, left £20,769 (£20,658 net).

Mr. A. K. Maples, retired solicitor, of Spalding, left £74,788 (£74,547 net).

NOTES OF CASES

COURT OF APPEAL

HIRE-PURCHASE: MOTOR-CAR DEALER'S GUARANTEE

Midland Counties Motor Finance Co., Ltd. *v.* Slade

Somervell, Cohen, and Denning, L.JJ. 4th October, 1950

Appeal from Hilbery, J.

The defendant, a dealer in motor-cars, had a customer who was anxious to purchase a certain motor-car from him. The plaintiff company purchased the car from the dealer and entered into a hire-purchase agreement with the customer as hirer, which provided that the hirer should pay to them a sum down and instalments. At the same time the dealer entered into a contract with the company whereby he guaranteed the hirer's due performance of the hire-purchase contract. The company were permitted by the contract of guarantee to give the hirer extra time for paying, " Provided that no such variation shall make [the dealer] liable for a greater maximum sum under this guarantee than that for which " he was " liable as the said agreement now stands. Also provided that the company shall inform [the dealer] when any payment or instalments shall be more than thirty days overdue." An instalment due on 31st October, 1948, was not paid. On 18th November the company granted the hirer a month's extension to 30th November. On 28th December the company informed the dealer that the hirer had expressed himself unable to perform the hire-purchase agreement; that they had told him to return the car to the dealer; and that the dealer owed them, under the guarantee, £216 outstanding under the hire-purchase contract. The dealer contended that the instalment due on the 31st October became thirty days overdue on 30th November, and that, as the company had not informed him of that fact until 28th December, they were in breach of the contract of guarantee and he was released. The company contended that, in view of the extension of time, in variation of the hire-purchase agreement, granted to 30th November, the instalment did not become overdue under the agreement, as varied, until after that date, and that the dealer had accordingly been informed within the requisite thirty days. Hilbery, J., accepted that contention, and the defendant dealer now appealed.

SOMERVELL, L.J., said that the key to the construction of the contract of guarantee was that the proviso, by its position in the contract, limited or conditioned the agreement that the giving of time to the hirer should not avoid the guarantee. On the company's construction real effect would not be given to the place of the proviso in the agreement of guarantee, and time could be given and extended to the hirer without knowledge of the guarantor, who would only know if thirty days beyond the extended time had elapsed without payment. In effect the agreement permitted the hire-purchase company to enlarge the time, but provided that if they did so for a period longer than thirty days beyond the date fixed by the original agreement with the hirer they must let the dealer know. The company's action on the guarantee therefore failed.

COHEN and DENNING, L.JJ., agreed. Appeal allowed.

APPEARANCES: *G. N. Black* (*J. R. Phillips & Co.*, London and Bradford); *J. F. Drabble* (*Barlow, Lyde & Gilbert*, for *Swann, Dodson & Co.*, Sheffield).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

FACTORIES: " GOOD CONSTRUCTION " OF LIFTING TACKLE: INTERPRETATION

Beadsley *v.* United Steel Companies, Ltd.

Bucknill, Singleton and Birkett, L.JJ. 12th October, 1950

Appeal from Ormerod, J.

The plaintiff's husband, while working at the defendants', his employers', steel works, was killed when a heavy mould fell on him. The accident happened because a fellow employee, instead of using a stirrup sling which the defendants had provided, negligently used a three-fold chain sling which happened to be attached to the crane. By s. 23 (1) of the Factories Act, 1937 " . . . No chain, rope or lifting tackle shall be used unless it is of good construction, sound material, adequate strength and free from patent defect." In an action by the deceased's widow, tried at Leeds Assizes, Ormerod, J., held the defendants guilty of a breach of that duty in that s. 23, he said, required that the tackle used should be of good construction for the purpose for which it was being used. He awarded the plaintiff £2,804 damages. The defendants appealed.

SINGLETON, L.J., said that it was not necessary to read anything into s. 23 (1). It had never been suggested that the tackle used was not of perfectly good construction for the purpose for which it was constructed. In his opinion the defendants were not in breach of s. 23 (1). The Act of 1937 put a heavy burden on employers. A duty laid on employers was absolute, and breach of it might entail a criminal prosecution; but the Act did not make employers responsible for everything a workman did: it was still recognised that, however good employers might be, and whatever effort they might make to comply with their statutory obligations, accidents would still happen through the carelessness of workmen. If the Legislature had intended to make the occupiers of factories responsible because lifting tackle of good construction was not suitable for the purpose for which it was used, it would have been easy to say so. The word " suitable " did appear in some sections of the Act. The plaintiff would be left to her claim under the Workmen's Compensation Acts.

BUCKNILL and BIRKETT, L.JJ., concurred. Appeal allowed.

APPEARANCES: *H. I. Nelson*, K.C., and *N. Black* (*Jackson and Jackson*, for *J. W. Fenoughty, Ashton & Co.*, Sheffield); *F. W. Beney*, K.C., and *F. Denny* (*Bell, Brodrick & Gray*, for *Harold Jackson & Co.*, Sheffield).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

LANDLORD AND TENANT: ADVERTISEMENTS ON OUTSIDE WALLS

***In re* Webb's Lease; Sandom *v.* Webb**

Danckwerts, J. 5th October, 1950

Adjourned summons.

The lessor, who carried on the business of butcher, grocer and provision merchant, let the upper two floors of his business premises to the lessee for twenty-one years; at the time when the lease was granted, there had been for some fifteen years two large advertisements on the outside walls, one relating to the lessor's business and the other advertising a brand of matches. A dispute arose as to the lessor's right to use the outside walls for the two advertisements, and the lessee asked the court to determine this question.

DANCKWERTS, J., said that there was obviously no right of necessity in the present case; but the lessor might have some right. The nearest case appeared to be *Simpson* v. *Weber* (1925), 133 L.T. 46, of which it might be said that it went further than any other case in favour of an implied reservation. That case did not appear to have been cited in other cases on the subject; if it had, it might have been criticised. There might have been exceptional cases in which it was only common-sense to imply special circumstances. In the present case, the two advertisements had been on the walls some fifteen years before the lease was executed, and where nothing had been said about removing them, it seemed common-sense to infer that there was an implied reservation in the lessor's favour that he had a right to keep the advertisements on the walls. There was no evidence to justify him (the learned

judge) in going beyond that, and he held that the lessor's right was limited to the two advertisements in existence at the date of the lease.

APPEARANCES: *A. de W. Mulligan* (*F. Duke & Sons*); *C. R. D. Richmount* (*Neil Maclean & Co.*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

ESTATE DUTY: LIFE INSURANCE POLICIES

In re Oakes' Settlement; Public Trustee *v.* Inland Revenue Commissioners

Romer, J. 12th October, 1950

Adjourned summons.

In 1904 the deceased took out three insurance policies on his life under s. 11 of the Married Women's Property Act, 1882, for the benefit of his wife in the event of her surviving him, but if he survived her, he should be entitled to the benefits under the policy. The first premiums were paid by the wife's father, but from 1909 onwards the deceased paid the premiums. In 1919, in consideration of certain lump sum payments, the policies were converted into fully paid-up policies. The deceased died on 2nd September, 1948, and was survived by his wife. Estate duty was claimed under the Customs and Inland Revenue Act, 1889, s. 11, which provides: "The charge under the said section shall extend to money received under a policy of insurance effected by any person . . . on his life, where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit."

ROMER, J., said that because the wife's father had paid the first premiums, it could not be said that the deceased was not the person who "effected" the policies of insurance; the mere fact that the wife's father, a wealthy man, had paid the first premiums, was irrelevant; in his (the learned judge's) judgment it was clear that the deceased had "effected" the policies. Further, the wife was a donee for whose benefit the policy was kept up, although it was provided that the deceased, if surviving the wife, should be entitled to the benefits of the policy; the section did not state: "where the policy is wholly kept up by him *wholly* for the benefit of a donee"; the mere fact that the deceased had a contingent interest did not displace the view that the wife was to be regarded as the donee for the purpose of the section. Finally, it was argued that the sums paid in 1919 for the purpose of converting the policies into fully paid-up policies were not "premiums" for the purposes of s. 11 of the Act of 1889. That argument overlooked that what actually occurred in 1919 was that the deceased paid the lump sums by way of compounding for the future outstanding annual premiums; the payments made in 1919 were merely pre-payments of the premiums. Liability to estate duty accrued therefore under the relevant part of s. 11 of the Act of 1889.

APPEARANCES: *Jackson Wolfe* (*Stanley Attenborough and Co.*); *J. H. Stamp* (*Solicitor of Inland Revenue*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

DIVISIONAL COURT

ROAD TRAFFIC: INSURANCE CERTIFICATE: NOTICE TO PRODUCE UNNECESSARY

Machin *v.* Ash and Others

Lord Goddard, C.J., Byrne and Ormerod, JJ.
4th October, 1950

Case stated by Luton justices.

Informations were preferred against persons concerned in the use of a motor lorry on a road without there being in force in relation to that use a third-party risks policy of insurance as required by the Road Traffic Act, 1930, contrary to s. 35 of that Act. At the hearing of the informations the police officer who had stopped the lorry and had ascertained from the certificate that it was not, as then being used, covered by insurance, gave evidence of the contents of the certificate of insurance. Counsel for the defendants submitted that, as no notice to produce the certificate of insurance had subsequently been given, the police officer was giving secondary evidence of the contents of a document, and that accordingly there was no evidence on which the justices could convict. The justices accepted that contention and dismissed the informations. The prosecutor appealed in each case.

LORD GODDARD, C.J., said that there was no need to give notice to produce the certificate of insurance. The policy was presumably in the possession of the owner of the lorry, and it was therefore for him to produce it. In *Williams* v. *Russell* (1933), 49 T.L.R. 315, it was laid down that it was unnecessary to give notice to produce, as the information was itself notice. The case would be remitted to the justices with an intimation that the evidence was admissible and that there was therefore a case for the defendants to answer.

BYRNE and ORMEROD, JJ., agreed. Appeal allowed.

APPEARANCES: *Niall MacDermot* (*Sharpe, Pritchard & Co.*, for *J. B. Graham*, Bedford); *A. K. Kisch* (*R. Graham Page*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

UNINSURED DRIVING: "SPECIAL REASONS": CONDITIONAL DISCHARGE

Taylor and Another *v.* Saycell

Lord Goddard, C.J., Byrne and Ormerod, JJ.
16th October, 1950

Case stated by the Recorder of Sheffield.

The two defendants, who were partners in a road-haulage business, were convicted at petty sessions of contravening s. 35 of the Road Traffic Act, 1930, in that they made a use of a motor lorry which was outside the limited cover expressly given by the insurance policy. The lorry was accordingly at the material time not covered in respect of third-party risks as the Act requires. The justices fined the defendants £1 each, and disqualified them for one year from holding a driving licence. The recorder allowed their appeal against sentence. While not finding special reasons why the defendants should not have been disqualified, he was satisfied, having regard also to the smallness of the fines, that the defendants' offence against s. 35 had not been serious, and he held that he was warranted in making an order for the conditional discharge of the defendants which, by virtue of s. 12 (2) of the Criminal Justice Act, 1948, would avoid their being disqualified. The prosecutor appealed. (*Cur. adv. vult.*)

LORD GODDARD, C.J., reading the judgment of the court, said that it was quite unable to share the recorder's view that the offence of driving an uninsured lorry, more especially in a city, was not an offence of a serious character. Policies were often taken out with limited cover in order that a smaller premium might be payable. Driving uninsured vehicles was generally a very serious offence: an accident might happen as soon as the vehicle started on its uninsured journey. It was the bounden duty of insured persons to see that there was no breach of the conditions of the policy which would entitle the insurer to decline liability. It was not suggested that the defendants had not understood the conditions of the policy, and the court had laid down that it was the duty of assured persons to make themselves acquainted with the terms of their policies. They (their lordships) were throwing no doubt on *Quelch* v. *Collett* [1948] 1 K.B. 478; 92 SOL. J. 98, where it was held, on facts very different from those here, that, though justices might not find special reasons for refraining from disqualifying, they might discharge the offender under s. 1 (1) of the Probation of Offenders Act, 1907. There could be no doubt that there was jurisdiction in the court to discharge conditionally under s. 12 of the Act of 1948 and thereby avoid the necessity of disqualification. But it did not follow that they should do so unless in the most exceptional circumstances. It had been said in *Gardner* v.

James (1948), 92 SOL. J. 732; 65 T.L.R. 36, at p. 37, that it was very difficult indeed to see how justices could be justified in acting under the Probation of Offenders Act for reasons which would not constitute special reasons entitling them to refuse, on a conviction, to disqualify for holding a licence. The court would never readily interfere with the exercise of such a discretion as that which the recorder had exercised. But it could see no grounds here on which it could be said to be proper to grant an order of conditional discharge for the purpose of avoiding disqualification, and he wished to repeat with emphasis what he had said in *Gardner* v. *James*, *supra*. There might be cases, as had recently been pointed out in that court in *Pilbury* v. *Brazier* (1950), 94 SOL. J. 672, where a technical objection could be taken on the terms of the policy which no reputable insurance company would take. It was not suggested here that the insurers would have taken up the attitude that a mere technicality was concerned and that they would have accepted liability had an accident occurred, in which case special reason would have existed for not disqualifying the defendants. The case must go back to the recorder with an intimation that there was no evidence on which he could properly exercise his discretion to make an order of conditional discharge.

The case illustrated what he (his lordship) could not help thinking was an unintentional lacuna in the Road Traffic Act, 1930: disqualification could only be imposed from the date of conviction; it therefore ran here from March until April, 1950, when the recorder removed it. The effect of the present judgment was to restore it, but it would be for twelve months from March. It was to be hoped that the law would be altered so that where an appellate court imposed disqualification it would run from the date of the decision on the appeal. Appeal allowed.

APPEARANCES: *D. S. Forrester-Paton* (*Sharpe, Pritchard and Co.*, for the *Town Clerk*, Sheffield); *J. F. Drabble* (*Bell, Brodrick & Gray*, for *Keeble, Hawson, Fennell & Arnold*, Sheffield).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

LANDLORD AND TENANT: PREMISES USED AS BROTHEL

Borthwick-Norton and Others *v.* Dougherty

Pritchard, J. 4th October, 1950

Action.

The head lease and the underlease of premises in London of which the plaintiffs were the landlords and the defendant the tenant contained identical covenants by the lessee and underlessee, respectively, not to do, or suffer to be done, on the premises any act which might be, or grow to be, an annoyance, damage or disturbance of the lessors, and further to keep and use the premises as and for a private dwelling-house only. The house was used as a brothel, and the landlords therefore brought this action against the tenant for possession on forfeiture of the lease for breach of covenant. The tenant was himself no party to the use being made of the premises, although he was aware of it.

PRITCHARD, J., said that the tenant, although he knew that the premises were being used as a brothel, failed to take sufficient steps to obtain the evidence on which he could have started an action for forfeiture of the underlease. He failed to take reasonable steps to stop the premises from being so used, and therefore "suffered" them so to be used. He was in breach of his covenant and therefore liable to forfeiture. It was contended for the tenant that the present case was a proper one in which relief against forfeiture should be granted under s. 146 (2) of the Law of Property Act, 1925. In *Borthwick-Norton* v. *Romney Warwick Estates, Ltd.* [1950] W.N. 134, a similar case, relief against forfeiture was refused. There the tenant had sought to set up that he knew nothing of the brothel in question, and failed. Here it had never been suggested that the tenant did not know that the premises were being used as a brothel, but he contended that he took reasonable steps to have the nuisance abated. He (his lordship) found that he did not, and he was therefore not inclined to exercise his discretion in the defendant's favour. Judgment for the plaintiffs.

APPEARANCES: *Melford Stevenson*, K.C., and *Sir Shirley Worthington-Evans* (*Trower, Still & Keeling*); *B. L. A. O'Malley* (*Lee & Pembertons*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

MONEYLENDING: TRANSACTION SUBSTANTIALLY EFFECTED AT LENDER'S ADDRESS

Grosvenor Guarantee Trust, Ltd. v. Colleano and Another

Morris, J. 18th October, 1950

Action.

The first defendant, a well-known actor in London, and the second defendant in October and November, 1949, in order to finance a film company, borrowed from the plaintiff company, moneylenders, £700 and £350, repayable on certain terms with £150 per cent. a year interest. The £700 was duly repaid with interest, but the first defendant (the second was believed to be out of the jurisdiction and did not appear in the action) disputed liability for the £350, (1) because, he said, so far as he was concerned, that transaction had not been effected at the plaintiffs' address and so was irrecoverable under s. 1 (3) of the Moneylenders Act, 1927, and (2) the interest on both loans was harsh and unconscionable, and both transactions should be reopened. The second loan was granted at the request of the second defendant, made to the plaintiffs' secretary at the company's office. The formalities of the loan were completed at the second defendant's address, the first defendant being present, however.

MORRIS, J., said that a loan was irrecoverable by s. 1 (3) of the Act of 1927 if the moneylender carried on business at any other place than his authorised place of address. It was therefore argued that the £350 was irrecoverable. That submission was not valid: the two defendants had acted very closely together, and when the first went to the second's house he was entirely prepared to concur in what had already been arranged. The case was indistinguishable from *Cornelius* v. *Phillips* [1918] A.C. 199, where Lord Finlay said, at p. 204, that, if the transaction were substantially effected at the registered address of the moneylender, the fact that subsidiary acts were done elsewhere did not amount to a contravention of a provision corresponding with s. 1 (3) of the Act of 1927. As for the question of interest, the effect of s. 10 (1) of the Act of 1927 was that, if the rate of interest exceeded 48 per cent. a year, it was for the moneylender to satisfy the court that the interest charged was not excessive and that the transaction was not harsh and unconscionable. The company's secretary knew that the second defendant was an American here only temporarily. The whole transaction was curious, and such as to suggest caution when lending money; it was curious for a prominent actor and a film producer to be borrowing a comparatively small sum from a moneylender to finance film production. It was reasonable to charge a high rate of interest. On the other hand, the secretary was relying mainly on the ability of the first defendant to repay him. He was a prominent actor, playing in a successful production. Such an actor did not suddenly vanish from professional life. The plaintiffs had not satisfied him (his lordship) that in all the circumstances the rate was not excessive to a borrower with a high earning capacity who was fortunately placed. A high rate was, however, justified, and he thought that it should be 60 per cent. a year. Judgment for the plaintiffs for £350, the principal of the second loan, and for an account to be taken on the balance of interest at 60 per cent. due on both loans.

APPEARANCES: *Claude Duveen* (*M. A. Jacobs & Sons*); *Eric Myers* (*Cohen & Cohen*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

ORDER TO PAY COSTS: RIGHT OF APPEAL

R. *v.* London Quarter Sessions; *ex parte* Bowes

Lord Goddard, C.J., Morris and Parker, JJ.
27th October, 1950

Application for an order of certiorari.

A limited company of diamond brokers were convicted by a metropolitan magistrate of the offence of bringing goods (diamonds) to a place to be exported (see s. 177 of the Customs Consolidation Act, 1876, as applied by Pt. III of Sched. V to the Exchange Control Act, 1947, and s. 23 of the Act of 1947); the goods were condemned to be forfeited; and the Commissioners of Customs and Excise were awarded five guineas costs. The seizure of the goods had been advertised, with the result that various persons, as purchasers or consignees, claimed the goods, their claims being before the magistrate when he convicted the company and condemned the goods. The company's appeal against conviction was allowed by quarter sessions, who held that they had jurisdiction to entertain also the appeals against forfeiture. They allowed those appeals, holding that the forfeiture fell with the conviction. The present application for an order of certiorari was made on the ground that quarter sessions had no jurisdiction to entertain the appeals against forfeiture. (*Cur. adv. vult.*)

LORD GODDARD, C.J., reading the judgment of the court, said that it was not contended that the Summary Jurisdiction Acts or any of the Acts extending the right of appeal to quarter sessions conferred on the claimant purchasers any right of appeal: orders of condemnation were not convictions. But it was contended that, having been ordered to pay five guineas costs, they thereby acquired a right of appeal under s. 50 of the Metropolitan Police Courts Act, 1839, whereby in every case of summary order or conviction before any metropolitan magistrate in which the sum or penalty adjudged should be more than £3, or imprisonment for more than one calendar month, any person who thought himself aggrieved by the order or conviction might appeal to quarter sessions. Did the words in s. 50 " in which the sum or penalty adjudged to be paid " include a sum ordered to be paid for costs? The court found it impossible to hold that those words were intended to apply to costs. It was contended that the order was one and entire, and that, as it ordered the claimants to pay a sum exceeding £3, that gave a right of appeal against the order as a whole. But in the opinion of the court costs were outside the purview of the section altogether. The fact was that there was no appeal here, and an award of costs did not give one. To decide otherwise would lead to the absurd result that an appeal in respect of condemnation of goods worth over £100,000 would depend on whether the magistrate gave costs to the amount of £3 or more.

It was a subject for regret that in a matter of such magnitude the Commissioners had elected to go before a court of summary jurisdiction when the proceedings might have been brought in the High Court. Citizens of another country were concerned in the goods, and the court could not but suppose that it would be a matter of considerable surprise and grievance to them to find that a case in which so much of their money was involved should be brought before a police court and that there was no power for them to insist on the matter being heard by a judge of the High Court. It was desirable that, where goods were claimed by persons against whom no proceedings were taken for an offence against the Customs, and more especially when those persons were foreigners, proceedings should be taken for condemnation in the High Court unless, indeed, the value of the goods were so low that proceedings in the High Court would not ordinarily be considered appropriate. Order of certiorari.

APPEARANCES: *G. D. Roberts*, K.C., *Gerald Howard*, K.C., and *W. H. Hughes* (*Solicitor of Customs and Excise*); *R. F. Levy*, K.C., and *B. M. Goodman* (*William Easton & Sons*); *Sir Godfrey Russell Vick*, K.C., and *T. G. Roche* (*William Easton & Sons*); *B. B. Gillis* (*William Charles Crocker*) held a watching brief.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY DIVISION

MAINTENANCE: WIFE'S APPLICATION FOR INJUNCTION

Scott *v.* Scott

Wallington, J. 24th October, 1950

Application for an injunction.

An application by the applicant wife was pending for periodical payments for herself and the children of the marriage, and for a secured provision, under s. 5 of the Law Reform (Miscellaneous Provisions) Act, 1949, on the ground of the husband's, the respondent's, alleged wilful neglect to maintain. Her present application was for an injunction to restrain her husband from removing any of his assets outside the jurisdiction of the court pending the hearing and final determination of that application under s. 5. It was stated for the wife that there was evidence that the husband definitely intended to transfer abroad all his assets with the object of depriving the wife of her statutory remedy, and it was contended that the court had jurisdiction in its discretion under s. 45 of the Supreme Court of Judicature (Consolidation) Act, 1925.

WALLINGTON, J., said that *Newton* v. *Newton* (1885), 11 P.D. 11, *Burmester* v. *Burmester* [1913] P. 76, *Jagger* v. *Jagger* [1926] P. 93, and *Fanshawe* v. *Fanshawe* [1927] P. 238, showed that s. 45 of the Act of 1925, which had governed earlier decisions, did not extend the previous jurisdiction of the court, and that there was no such remedy available as was now sought unless there were a subsisting order to pay. Although the present matter arose under the Law Reform (Miscellaneous Provisions) Act, 1949, and the question had therefore to be determined for the first time, the principle underlying the cases to which he had been referred must be held applicable to a case like the present. The court was powerless to grant an injunction to restrain the husband from removing his assets from the jurisdiction since no order under the new Act had been made, and all the evidence on which the making of such an order might be decided was not before the court. The court was powerless even though by the time the case reached the Court of Appeal, as he hoped it would, the assets might have disappeared. Application refused.

APPEARANCES: *John Latey* (*Rider, Heaton, Meredith and Mills*, for *Bellyse and Eric Smith*, Nantwich); *H. V. Brandon* (*Robinson and Bradley*, for *A. E. Whittingham & Son*, Nantwich).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

NULLITY: MOSLEM MARRIAGE

Risk (otherwise Yerburgh) *v.* Risk

Barnard, J. 27th October, 1950

Petition for nullity.

The wife sought annulment of her marriage at Alexandria to the respondent, a Moslem Egyptian domiciled in Egypt, on the ground that it was an unlawful polygamous union. The marriage contract provided that the husband could have up to four wives and that he could divorce the petitioner at will. It was contended that the court had jurisdiction by virtue of s. 1 (1) and (2) of the Law Reform (Miscellaneous Provisions) Act, 1949, which refers to " proceedings by a wife." (*Cur. aav. vult.*)

BARNARD, J., reading his judgment, said that the question was what " husband " and " wife " meant in s. 1 of the Act of 1949. In *Hyde* v. *Hyde* (1866), 1 P. & D. 130, at p. 133, Lord Penzance was satisfied that the court could not exercise jurisdiction over a Mormon marriage. In *Baindail* v. *Baindail* [1946] P. 122; 90 SOL. J. 151, Lord Greene, M.R., stated

that the courts had refused to regard a polygamous marriage as one entitling the parties to come for matrimonial relief to the courts of this country. See also *Lindo* v. *Belisaro* (1795), 1 Hag. Con. 216. If English law regarded a polygamous marriage such as the one before him as no marriage, it would seem at first sight that there could be no objection to the court's saying so, for the decree would be declaratory. But that would give a successful petitioner certain rights with regard to maintenance and custody. He was satisfied that the wife here had realised that the ceremony was one of marriage, and that she had entered into the marriage contract with full knowledge of its polygamous character. Lord Penzance had said (1 P. & D., at p. 138), that all he intended to decide was that as between each other the parties were not entitled to the remedies, the adjudication, or the relief of the matrimonial law of England. Lord Greene, M.R., had approved that passage in *Baindail* v. *Baindail, supra*; and, although Lord Penzance was concerned with a petition for dissolution, he (Barnard, J.) was satisfied that Lord Penzance had advisedly used the word "adjudication" and that the court had no jurisdiction to entertain the petition. Petition dismissed.

APPEARANCES: *William Latey*, K.C., and *J. B. Gardner* (*Cooper, Bake, Fettes, Roche & Wade*); the husband did not appear, and was not represented.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF CRIMINAL APPEAL

COMMON-LAW MISDEMEANOUR: LENGTH OF SENTENCE

R. *v.* Morris

Lord Goddard, C.J., Morris and McNair, JJ.
23rd October, 1950

Appeal against sentence.

The appellant was charged at Lewes Assizes on two counts of an indictment, first, with conspiring with others to evade customs duties on foreign-manufactured watches; and, secondly, with being knowingly concerned in the importation of 10,116 such watches with intent fraudulently to evade customs duties. He pleaded guilty on the first count, and the prosecution therefore did not ask that he should be found guilty on the second; and on that count a verdict of not guilty was entered. Hallett, J., regarded the appellant as the head and fount of the conspiracy, or at any rate as very much implicated in it, and said that in his opinion two years' imprisonment was insufficient punishment. He accordingly imposed a sentence of four years' imprisonment.

LORD GODDARD, C.J., giving the judgment of the court, said that for some years the opinion had prevailed that not more than two years' imprisonment could be imposed for a common-law misdemeanour. The judges had always claimed to have the right at common law to define acts as misdemeanours, though they had never so claimed in respect of felonies. For a misdemeanour the penalty was imprisonment and/or a fine, and that penalty was always in the discretion of the court. Magna Carta provided that the term of imprisonment should not be excessive, and the Bill of Rights provided that excessive fines should not be imposed or cruel or unusual punishments inflicted. But there was no doubt that the amount of a fine or the length of imprisonment for common-law misdemeanour was at the discretion of the court (see *R.* v. *Castro* (1880), 5 Q.B.D. 490). For many years the courts had, however, been very reluctant to impose more than two years' imprisonment for such an offence because, with the penal reforms of the last century, imprisonment had become a very severe form of punishment. For sentences of over two years, Acts of Parliament provided sentences of penal servitude—a less rigorous form of punishment; but no statute had taken from the courts the power to impose longer terms of imprisonment for a common-law misdemeanour. The Criminal Justice Act, 1948, abolished the distinction between imprisonment and penal servitude, but before then the treatment meted out to prisoners serving each had become the same. The rigours of imprisonment with hard labour had disappeared. The reasons which had led the courts to confine sentence for common-law misdemeanours to two years had therefore disappeared. A court could fine or imprison at its discretion for such an offence, provided that it did not give an inordinate sentence. For a conspiracy to commit a black market offence two years' imprisonment might be quite inadequate. The appellant's main point was that, as the maximum sentence prescribed by statute for defrauding the customs was only two years' imprisonment, it was not right to impose a longer sentence by charging him instead with conspiracy at common law. But he had been smuggling for months—and, on the last occasion, on a very large scale. Each of the 10,000 odd watches which were smuggled could have been made the subject of a separate charge. The considerations put forward therefore did not apply. Appeal dismissed

APPEARANCES: *B. E. Dutton Briant* (*J. E. Dell & Loader*, Brighton); *Malcolm Morris* (*Solicitor for Customs and Excise*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

ROYAL ASSENT

The following Bills received the Royal Assent on 26th October:—

Air Force Reserve
Allotments
Allotments (Scotland)
Army Reserve
Bath Extension
Diseases of Animals
Food and Drugs (Milk, Dairies and Artificial Cream)
Housing (Scotland)
Maintenance Orders
Public Utilities Street Works

HOUSE OF COMMONS

QUESTIONS

Mr. MOODY asked whether the Attorney-General would consider amending reg. 1 (*a*) of the Prosecution of Offences Regulations, 1946, whereby it was the duty of the Director of Public Prosecutions to take over and carry on a prosecution when a warrant had been obtained by a private individual, so that those who obtained the warrant could select their own solicitor and counsel for the proper presentation of the case to the examining justices for a committal for trial, in view of the unsatisfactory way in which the case had been presented in the recent case at Arundel, when the nominee of the Director of Public Prosecutions clearly invited the examining magistrates to decline to send the case for trial.

In reply, Sir HARTLEY SHAWCROSS stated that after two investigations by experienced officers from Scotland Yard, the Director of Public Prosecutions and senior Treasury counsel had agreed that the evidence did not justify a prosecution. He had himself perused the papers and agreed with this conclusion.

Later the justices at Arundel had issued a warrant on the application of a private prosecutor, whereupon it had become the statutory duty of the Director of Public Prosecutions to take over the conduct of the proceedings. The justices had decided after a full hearing that there was no *prima facie* case to answer. He was satisfied that the distinguished counsel who had conducted the case for the Crown before the justices at Arundel on his (the Attorney-General's) personal nomination, and not that of the Director of Public Prosecutions, had discharged his duty in accordance with the high tradition that it was the duty of those who appeared in the name of the Crown to prosecute, not to persecute. They acted as officers of justice, putting all the facts, including those favourable to the accused, before the court. [23rd October.

Mr. G. BROWN stated that the publication and presentation to the House of Commons of annual reports under the General

Inclosure Act, 1845, had been suspended in 1939, in order to save manpower and materials. Publication was now being resumed, and the report for the year ending 31st December, 1950, would be presented to Parliament in due course combined with a report of the proceedings during the intervening period. [23rd October.

Mr. BLENKINSOP said that the question of an amendment to the Rent Restrictions Acts in order to protect a tenant from eviction where the landlord lost possession of the house due to default on a mortgage agreement would be considered at the comprehensive review of the Rent Restrictions Acts which the Government intended to undertake, but there was no early prospect of legislation. [23rd October.

Mr. MICHAEL STEWART stated that the decision as to whether a court-martial should sit in secret was a matter for the court itself. [24th October.

The PRIME MINISTER announced that the King had been pleased to approve the appointment of the right hon. Lord Justice COHEN as Chairman of the Royal Commission to be set up to inquire into the present system of taxation of profits and incomes. The precise terms of reference and the full composition of the Royal Commission would be announced shortly. [24th October.

Mr. MAURICE WEBB stated that the list of persons authorised to witness signatures on Form R.G. 5A (Application for Replacement of Ration Document) was not exhaustive but was merely intended to illustrate the kind of responsible person whose signature was acceptable. He would be glad to consider including solicitors upon the list when the form was reprinted. [25th October.

Mr. BLENKINSOP declined to introduce legislation to enable courts of summary jurisdiction, on the granting to a wife of a separation order, to substitute the wife as the statutory tenant of premises controlled by the Rent Restrictions Acts or as the tenant of a council house. Questions as to the possession of houses controlled by these Acts were within the jurisdiction of the county courts, and the Minister of Health saw no reason for making any change. On the particular circumstances mentioned he referred the questioner to the Court of Appeal decision of 2nd March, 1950, *Middleton* v. *Baldock* [1950] 1 K.B. 657. With regard to council houses, the Housing Acts gave local authorities full discretion in the allocation of their premises. [25th October.

Mr. CHUTER EDE stated that 2,924 private cars had been stolen or driven away without the owner's consent in the Metropolitan Police district in the first nine months of 1950. Of these 226 had not been recovered. [26th October.

Mr. CHUTER EDE stated that two Attendance Centres as provided under the Criminal Justice Act, 1948, had now been opened, and a third would open shortly. Extension of this experiment would depend on the experience derived from the actual running of these establishments. [26th October.

Mr. BEVAN stated that he had prepared and issued a statement under s. 76 (2) of the Local Government Act, 1948, for each of the 1,742 rating areas in England and Wales, except for the Scilly Isles, the Inner Temple, and the Middle Temple. Two hundred thousand copies in all had been printed. [26th October.

STATUTORY INSTRUMENTS

Bacon (Rationing) (Amendent No. 5) Order, 1950. (S.I. 1950 No. 1692.)
County of Dumfries (Arrow Gill) Water Order, 1950. (S.I. 1950 No. 1694.)
Export of Goods (Control) (Amendment No. 7) Order, 1950. (S.I. 1950 No. 1703.)
Iron and Steel Prices (No. 4) Order, 1950. (S.I. 1950 No. 1699.)
Maidenhead Water Order, 1950. (S.I. 1950 No. 1695.)
Milk (Control and Maximum Prices) (Great Britain) (Amendment No. 2) Order, 1950. (S.I. 1950 No. 1693.)
Motor Vehicles (Variation of Speed Limit) Regulations, 1950. (S.I. 1950 No. 1705.)
National Health Service (General Dental Services) Amendment Regulations, 1950. (S.I. 1950 No. 1682.)
National Health Service (General Medical and Pharmaceutical Services) (Scotland) (Amendment No. 4) Regulations, 1950. (S.I. 1950 No. 1685.)
Pin, Hook and Eye, and Snap Fastener Wages Council (Great Britain) Wages Regulation Order, 1950. (S.I. 1950 No. 1691.)
Purchase Tax (No. 10) Order, 1950. (S.I. 1950 No. 1665.)
Draft **Scottish Milk Marketing** Scheme (Extension of Area) Order, 1950.
Silk Duties (Drawback) (No. 3) Order, 1950. (S.I. 1950 No. 1684.)
Stopping up of Highways (East Suffolk) (No. 2) Order, 1950. (S.I. 1950 No. 1687.)
Stopping up of Highways (Isle of Wight) (No. 1) Order, 1950. (S.I. 1950 No. 1698.)
Stopping up of Highways (Kent) (No. 4) Order, 1950. (S.I. 1950 No. 1680.)
Stopping up of Highways (London) (No. 9) Order, 1950. (S.I. 1950 No. 1688.)
Stopping up of Highways (London) (No. 10) Order, 1950. (S.I. 1950 No. 1686.)
Stopping up of Highways (Nottinghamshire) (No. 5) Order, 1950. (S.I. 1950 No. 1697.)
Stopping up of Highways (Warwickshire) (No. 5) Order, 1950. (S.I. 1950 No. 1696.)
Draft **Teachers Superannuation** (North Borneo) Scheme, 1950.
Utility Apparel (Men's and Boys' Shirts, Underwear and Nightwear) (Manufacture and Supply) (Amendment No. 3) Order, 1950. (S.I. 1950 No. 1672.)

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 88-90, Chancery Lane, W.C.2, and contain the name and address of the subscriber, and a stamped addressed envelope.

Breach of Hire-Purchase Agreement—FURNITURE REMOVED TO DEPOSITORY—RECOVERY

Q. Will you please advise us what action should be taken by the owners of furniture sold under a hire-purchase agreement (1) when the agreement is for over £100, and (2) when the agreement is for less than £100, if the hirer, who is in arrear with his hire-purchase payments, in breach of his agreement removes the furniture from his home without the owner's consent and stores it in a furniture depository. The owners know where the furniture depository is, but cannot trace the hirer, and the owners wish to recover the furniture.

A. Assuming that the breach of the hire-purchase agreement confers on the owners an immediate right to possession of the goods: (1) if the agreement is for over £100 and therefore outside the Hire-Purchase Act, 1938, proceedings in detinue should be brought against the furniture depository following a personal demand and refusal to deliver; (2) if the agreement is for less than £100, then the 1938 Act applies and we consider that if more than one-third of the price has been paid proceedings in detinue against both the hirer and the depository should be taken. Substituted service may be necessary against the former. If less than one-third has been paid, then detinue proceedings against the depository alone should be taken.

Tenant's Furniture Infested with Wood-Worm from Flooring

Q. A was the tenant of B of a certain flat and some twelve months ago informed B that the flooring and other wood of the property was infested with wood-worm. B made no effort to remedy the defects, with the result that the wood worm has now passed into A's furniture and caused considerable damage. Has A any claim against B?

A. We take it that, as nothing appears to the contrary, the landlord is not bound by any covenant to repair. He is not, therefore, obliged at common law to take any action when informed of the wood-worm. If the tenant likewise is inactive and it spreads to his furniture we do not consider that he has any remedy at common law. The matter is not within *Rylands* v. *Fletcher*, for A brought his furniture on to B's land. It is not nuisance, for the worms encroach on chattels in this case, not on land. Nor is B liable for them as "animals," for he did not have custody of them. B had no duty in law to A and hence cannot be liable to him in negligence. We know of no decided cases on this point. If the flat is within the prescribed limits of rateable value, it might be argued that wood-worm rendered it "unfit for human habitation," and damages might then be obtained under the covenant as to fitness implied by Pt. I of the Housing Act, 1936.

Agreement for Loan

Q. In August, 1949, Mrs. X lent Mr. Y £300 at 5 per cent. interest. At the time there was nothing put in writing regarding the terms of the loan. Mrs. X has no present intention of calling in the loan, but she wishes to be protected in case anything happens to Mr. Y, so that if, for example, he dies, she will be able to claim repayment from his estate. Can Mrs. X now be protected by some formal document, and, if so, what form should this document take ?

A. What appears to be required in this case is an acknowledgment of the loan and an agreement to repay the same on demand (or on notice) with interest in the meantime at the rate of 5 per cent. per annum. In our view, this can best be done by an agreement between Mrs. X and Mr. Y which recites that in August, 1949, Mrs. X advanced £300 to Mr. Y at 5 per cent. per annum (as he thereby acknowledges) and that interest has been paid up to date (if such is the case) but that the loan has not been repaid. The agreement should go on to provide that Mr. Y will repay the loan on demand, or on three months' notice, or otherwise as may have been agreed, and will pay interest at the stipulated rate by (half-yearly) instalments on dates named in the agreement. If repayment will be on notice it might be desirable to insert a provision for the money to be immediately payable in the event of Mr. Y's death or bankruptcy and that Mrs. X will not seek to recover payment otherwise than in accordance with the agreement. The agreement should be by Mr. Y for himself and his executors and administrators and with Mrs. X and her executors, administrators and assigns, in order that Mrs. X may assign the benefit but Mr. Y cannot assign the burden. The consideration might be expressed to be Mrs. X's forbearance to require immediate payment, but generally it would be preferable to have the document under seal, in which case no consideration need be expressed. Stamp duty 15s. if no interest stated to be outstanding.

NOTES AND NEWS

Honours and Appointments

On the retirement of Judge Trevor Hunter, K.C., from the County Court Bench, the Lord Chancellor has appointed Mr. FRANCIS KIRKLAND GLAZEBROOK to succeed him as one of the Judges of Circuit No. 58 (Ilford, etc.) and additional Judge at Clerkenwell County Court.

The King has been pleased, on the recommendation of the Lord Chancellor, to approve the appointment of Mr. WALTER GEORGE HAMMOND to be Deputy Chairman of the Court of Quarter Sessions of the County of Lincoln (Parts of Holland).

The Lord Chancellor has appointed Mr. KENNETH PETER DAVID THOMAS to be the Registrar of Bow County Court as from 30th October, 1950 (*vice* Mr. B. G. Nichols, deceased).

Mr. D. M. KERMODE has been appointed senior assistant solicitor to Blackburn County Borough Council.

Mr. P. L. SEVILLE, assistant solicitor to Rotherham County Borough Council, has been appointed assistant solicitor to Buckinghamshire County Council.

Miscellaneous

At the Examination for Honours of candidates for admission on the Roll of Solicitors of the Supreme Court, the Examination Committee recommended the following as being entitled to Honorary Distinction :—Second Class : D. E. C. Callow, D. J. Hughes-Morgan, D. G. James, J. R. Jones, J. A. Nilsson, W. M. Pybus, P. D. Thorp, J. H. Walford, I. McD. Wright. Third Class : R. R. Atherden, A. J. Buck, T. G. P. Cocking, N. A. Cox, R. Goodall, A. D. Goodwin, A. G. Hine, E. Keighley, A. H. Lewin, R. C. M. Nathan, P. R. Procter, S. T. Rutter, R. E. Stagg, P. C. Turner, A. N. Wilson, C. H. C. Winnett.

The Council of The Law Society have given Class Certificates to the candidates in the Second and Third Classes.

Seventy-six candidates gave notice for examination.

At The Law Society's Preliminary Examination held from 9th to 12th October twelve candidates passed out of thirty-nine who entered.

THE LAW SOCIETY'S INTERMEDIATE EXAMINATION

STEPHEN'S COMMENTARIES

As provided by regulations made by The Law Society on 21st April, 1950, the prescribed books for the law portion of the Society's Intermediate Examination as from the 1st June, 1951, are part of the 21st edition of Stephen's Commentaries on the Laws of England.

During the currency of this edition of " Stephen," the publishers —Butterworth & Co. (Publishers), Ltd.—intend to publish a supplement not later than the end of April in each year, showing changes in the law up to the previous 1st January.

Candidates will be asked questions on such parts of the supplements as relate to the prescribed pages of " Stephen," but not until a supplement has been published for at least six months. It follows, therefore, that candidates at the Intermediate Examination held in March and June in any year may be asked questions on the supplement which was published in the previous year, but candidates at the Examination held in November in any year may be asked questions on the supplement which was published in that year.

In the match played by the Bar Lawn Tennis Society against The Law Society at Hurlingham, on Sunday, 15th October, J. Cope and H. McCarthy lost to Alan Brown and L. J. Walter (3–6, 2–6), bt. E. A. Dearman and E. Leigh Howard (6–3, 4–6, 9–7), bt. M. K. Panty and G. F. Powell (7–5, 7–5) ; M. Temple and D. Fairbairn lost to Alan Brown and L. J. Walter (4–6, 1–6), lost to E. A. Dearman and E. Leigh Howard (2–6, 3–6), lost to M. K. Panty and G. F. Powell (6–2, 3–6, 4–6) ; Mr. Justice Slade and Lord Dunboyne lost to Alan Brown and L. J. Walter (1–6, 1–6), lost to E. A. Dearman and E. Leigh Howard (0–6, 0–6), bt. M. K. Panty and G. F. Powell (6–3, 6–3).

THE SOLICITORS ACTS, 1932 TO 1941

THOMAS DAVID BLAND KIMPTON, of No. 615, Park West, Edgware Road, in the County of London, solicitor, having, in accordance with the provisions of the Solicitors Acts, 1932 to 1941, made application to the Disciplinary Committee constituted under the Act that his name might be removed from the Roll of Solicitors at his own instance on the ground that having been accepted for permanent employment in the Colonial Legal Service he is desirous of being called to the Bar, an Order was, on the 5th day of October, 1950, made by the Committee that the application of the said Thomas David Bland Kimpton be acceded to and that his name be removed accordingly from the Roll of Solicitors of the Supreme Court.

SOCIETIES

THE MID-SURREY LAW SOCIETY

The second annual general meeting of the Mid-Surrey Law Society was held on 18th October, 1950, and the following were elected : President : Mr. W. E. Farquharson, of Surbiton ; Vice-Presidents : Mr. A. W. Forsdike, of Kingston, and Mr. L. F. Biden, of Morden ; Secretary and Treasurer : Mr. G. A. Smith, of New Malden. Mr. Isted, the Secretary of the Kingston District under the Legal Aid Scheme, gave an address to the meeting on the working of the Act in conjunction with the practitioners in the area.

The Society's annual dinner and dance will be held on 10th November, 1950, at Putney.

" THE SOLICITORS' JOURNAL "

Editorial, Publishing and Advertising Offices : 88–90, Chancery Lane, London, W.C.2. Telephone : Holborn 1403.

Annual Subscription : £3 inclusive (payable yearly, half-yearly or quarterly in advance).

Advertisements must be received first post Wednesday.

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